HOUSE OF REPRESENTATIVES—*Monday, October 28, 1985*

The House met at 12 o'clock noon.

The Chaplain, Rev. James David Ford, D.D., offered the following prayer:

Let the favor of the Lord our God be upon us, and establish Thou the work of our hands upon us; yea, the work of our hands establish Thou it.—Psalm 90:17.

Gracious God, bless the work of our hands that it may be pleasing in Your sight. May what we do contribute to justice between peoples and peace between the nations. May our hands and hearts, our strength and our witness, be used to Your glory and as an expression of good will to all the people of Your creation. In Your holy name, we pray. Amen.

THE JOURNAL

The SPEAKER. The Chair has examined the Journal of the last day's proceedings and announces to the House his approval thereof.

Pursuant to clause 1, rule I, the Journal stands approved.

MESSAGE FROM THE SENATE

A message from the Senate by Mr. Sparrow, one of its clerks, announced that the Senate had passed without amendment a bill and joint resolutions of the House of the followng titles:

H.R. 3605. An act to provide that the authority to establish and administer flexible and compressed work schedules for Federal Government employees be extended through December 31, 1985;

H.J. Res. 308. Joint resolution designating the week beginning on October 20, 1985, as "Benign Essential Blepharospasm Awareness Week"; and

H.J. Res. 322. Joint resolution to provide for the designation of October 1985, as "National Sudden Infant Death Syndrome Awareness Month".

The message also announced that the Senate had passed with amendments in which the concurrence of the House is requested, a bill of the House of the following title:

H.R. 3244. An act making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1986, and for other purposes.

The message also announced that the Senate insists upon its amendments to the bill (H.R. 3244) "An act making appropriations for the Department of Transportation and related agencies for the fiscal year ending September 30, 1986, and for other purposes," requests a conference with the House on the disagreeing votes of the two Houses thereon, and appoints Mr. ANDREWS, Mr. COCHRAN, Mr. ABDNOR, Mr. KASTEN, Mr. D'AMATO, Mr. HATFIELD, Mr. CHILES, Mr. STENNIS, Mr. BYRD, and Mr. LAUTENBERG to be the conferees on the part of the Senate.

The message also announced that the Senate had passed a bill, joint resolutions, and a concurrent resolution of the following titles, in which the concurrence of the House is requested:

S. 1570. An act to amend the Fair Labor Standards Act of 1938 to provide rules for overtime compensatory time off for certain public agency employees, to clarify the application of that act to volunteers, and for other purposes;

S.J. Res. 207. Joint resolution to designate November 1, 1985, as "National Philanthropy Day";

S.J. Res. 227. Joint resolution to commend the people and the sovereign confederation of the neutral nation of Switzerland for their contributions to freedom, international peace, and understanding on the occasion of the meeting between the leaders of the United States and the Soviet Union on November 19-20, 1985, in Geneva, Switzerland;

S.J. Res. 228. Joint resolution relating to the proposed sales of arms to Jordan; and

S. Con. Res. 76. Concurrent resolution asking that the President bring the rights of the Polish people to the attention of the Soviet Government.

UNITED STATES NEEDS NEW POLICY TOWARD PHILIPPINES

(Mr. RICHARDSON asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. RICHARDSON. Mr. Speaker, the deteriorating situation in the Philippines and the subsequent press reports this weekend that President Marcos has an incurable disease, with perhaps only 1 year to live, suggests that the United States needs a new policy towards the Philippines in order to avoid another Iran.

The Reagan administration has acted properly in dispatching Senator LAXALT to convey our concerns. But a stronger policy is needed to avoid a Communist takeover and preserve American security interests, specifically, Subic and Clark bases. Specifically, we need to attach strong conditions to our assistance to that country. First of all, we need to press for fair and immediate Presidential elections so that an orderly democratic transition can take place. Second, we must press the Philippine Government to make urgently needed military and economic reforms and wage a war on the endemic corruption in that economy. Third, we should stress to President Marcos that Chief of Staff Fabian Ver should not be reappointed, given his involvement in the Aquino assassination and his inability to lead the Philippine military insurgency.

Mr. Speaker, like the Shah, President Marcos has lost touch with his people and with reality. Let us act now before we are forced to pull the rug from under him. Let us act now so that our security interests are preserved and the Philippine people, our friends and allies, do not fall under Communist hands.

FEDERAL TRUST FUNDS

(Ms. OAKAR asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. OAKAR. Mr. Speaker, today I am introducing legislation that would mandate the Treasury pay back the interest lost because of the loss of investment of trust fund moneys from civil service retirement, military retirement, Social Security retirement, and the highway trust funds.

Mr. Speaker, we have not passed the debt ceiling with the Gramm-Latta Senate amendment and are thus holding these trust funds hostage. We are losing millions of dollars of interest that these trust funds normally invest, and it is very, very, very wrong to do this, grossly unfair to the senior citizens, and some estimate that we will be losing up to $300 million in interest money that belongs to those trust funds because of our failure to act.

I hope Members will take a look at this legislation which would restore that money.

GRAMM-RUDMAN

(Mr. ALEXANDER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. ALEXANDER. Mr. Speaker, supporters of the so-called Gramm-Rudman proposal are like a man jumping off the Empire State Building and, on passing the fifth floor, announces, "So far so good."

The House is on record in support of strengthening the budgetmaking process, as of last week; and in passing Gramm-Rudman, the other body has made the same commitment. Unfortunately, when one takes a closer look at Gramm-Rudman, it becomes clear that, rather than cutting the deficit, the proposal would bring havoc to

Federal spending and plunge the Government into chaos.

The fears are expressed by those such as the Nobel Prize winners, the Secretary of Defense, the President's own economic advisers, and the chairman of the Armed Services Committee. The chairman of the Judiciary Committee even advises that the matter is probably unconstitutional.

Mr. Speaker, one must wonder how it would happen that such a prescription for chaos and disaster so poorly designed could ever pass either body of this Congress. Perhaps the answer lies in the small print in that it does not take effect until after the 1986 elections.

ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. Pursuant to the provisions of clause 5 of rule I, the Chair announces that he will postpone further proceedings today on each question on passing bills or on each motion to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 4 of rule XV.

Such rollcall votes, if postponed, will be taken on Tuesday, October 29, 1985.

DISTRICT OF COLUMBIA BUSINESS

The SPEAKER. The Chair recognizes the gentleman from California [Mr. DELLUMS], chairman of the Committee on the District of Columbia.

TRANSFER OF PAROLE AUTHORITY TO THE DISTRICT OF COLUMBIA PAROLE BOARD

Mr. DELLUMS. Mr. Speaker, by direction of the Committee on the District of Columbia, I call up the bill (H.R. 2050) to give to the Board of Parole for the District of Columbia exclusive power and authority to make parole determinations concerning prisoners convicted of violating any law of the District of Columbia, or any law of the United States applicable exclusively to the District, and ask unanimous consent that the bill be considered in the House as in the Committee of the Whole.

The Clerk read the title of the bill.

The SPEAKER pro tempore (Mr. GRAY of Illinois). Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the bill, as follows:

H.R. 2050

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. The first sentence of the first section of the Act entitled "An Act to reorganize the system of parole of prisoners convicted in the District of Columbia", approved July 17, 1947 (D.C. Code, sec. 24-201a; 61 Stat. 378), is amended by striking out "for the penal and correctional institutions of the District of Columbia" and inserting in lieu thereof "for prisoners convicted of violating any law of the District of Columbia or any law of the United States applicable exclusively to the District of Columbia".

SEC. 2. The Act entitled "An Act to establish a Board of Indeterminate Sentence and Parole for the District of Columbia and to determine its functions, and for other purposes", approved July 15, 1932 (D.C. Code, sec. 24-203 through sec. 24-209; 47 Stat. 696-699), is amended—

(1) in section 6 (D.C. Code, sec. 24-206)—

(A) by striking out "(a)" in subsection (a); and

(B) by striking out subsection (b); and

(2) by striking out section 10 (D.C. Code, sec. 24-209) and inserting in lieu thereof the following new section:

"SEC. 10. The Board of Parole for prisoners convicted of violating any law of the District of Columbia or any law of the United States applicable exclusively to the District of Columbia (created pursuant to the first section of the Act entitled 'An Act to reorganize the system of parole of prisoners convicted in the District of Columbia', approved July 17, 1947 (D.C. Code, sec. 24-201a; 61 Stat. 378) has exclusive power and authority, subject to the provisions of this Act, to release on parole, to terminate the parole of, and to modify the terms and conditions of the parole of, any prisoner convicted of violating a law of the District of Columbia, or a law of the United States applicable exclusively to the District of Columbia, regardless of the institution in which the prisoner is confined.".

SEC. 3. Section 304(a) of the District of Columbia Law Enforcement Act of 1953 (D.C. Code, sec. 4-134(a); 67 Stat. 100) is amended by striking out ", or the United States Board of Parole has authorized the release of a prisoner under section 6 of that Act, as amended (D.C. Code, sec. 24-206),".

SEC. 4. (a) After the date of enactment of this Act, individual convicted of violating both a law of the District of Columbia (including any law of the United States applicable exclusively to the District) and a law of the United States shall be given separate and distinct sentences for such convictions.

(b) The United States Parole Commission shall retain parole authority over individuals who, prior to the date of enactment of this Act, received unified sentences for violations of both a law of the District of Columbia (including any law of the United States applicable exclusively to the District of Columbia) and a law of the United States.

SEC. 5. Within one year after the date of the enactment of this Act, the Board of Parole for the District of Columbia, under applicable guidelines, shall make parole eligibility determinations and shall set a date certain for full parole hearings for all individuals brought within the parole authority of such Board under this Act. Each such individual shall be notified in writing of any determinations made under this section.

SEC. 6. (a) Except as provided in subsection (b), the provisions of this Act shall take effect on the date of the enactment of this Act.

(b) The amendments made by sections 1, 2, and 3 of this Act shall take effect one year after the date of the enactment of this Act.

Mr. DELLUMS. Mr. Speaker, I move to strike the last word.

Mr. Speaker, this is the third Congress in which this question has been before the body. Two years ago, the House on a voice vote adopted the change in the law, but no action was taken by the other body. Under present law in effect for 50 years or more, the vast majority of offenders convicted of violating either a local District of Columbia law or Federal law that applies only in the District served their sentences in facilities operated by the District of Columbia, and if they are granted parole, it is by the local D.C. Parole Board. One thousand seven-hundred offenders, however, serve in Federal facilities and are reviewed by the U.S. Board of Parole.

H.R. 2050, Mr. Speaker, merely establishes that since they are local offenders, parole jurisdiction will be with the local parole board. That is the arrangement, as you very well know, Mr. Speaker, in the 50 States and should apply here in the District of Columbia.

The chairman of our Subcommittee on Judiciary and Education that conducted the hearings on H.R. 2050 is the gentleman from California [Mr. DYMALLY], who will give a further explanation when he has the floor.

Mr. Speaker, I yield back the balance of my time.

Mr. DYMALLY. Mr. Speaker, I move to strike the last word.

Mr. Speaker, H.R. 2050, is the same bill introduced and passed by the House of Representatives in the 98th Congress. It would transfer parole over District of Columbia Code offenders in Federal prisons from the U.S. Parole Commission to the District of Columbia Parole Board.

There are over 1,700 District of Columbia Code offenders housed in Federal Bureau of Prison facilities. Male District of Columbia Code offenders are placed in Federal facilities for selective custody and various other reasons. Female District of Columbia offenders sentenced to greater than 1 year terms are routinely placed in Federal facilities as a matter of course. This is due to the absence of a local penal facility for female offenders. Most of these female offenders are confined at Alderson, WV, over 300 miles from the District of Columbia. Others are confined as far away as Texas.

Under present law, at section 24-209 of the District of Columbia Code, the place of an offender's confinement determines parole authority. This law is contrary to current Federal-State parole practices. According to the U.S. Parole Commission, the District of Columbia is the only local jurisdiction housing inmates in Federal correction institutions which does not retain its own parole authority. As a result of this practice, several Federal lawsuits by both male and female District of

Columbia Code offenders in Federal prisons have been filed.

Several points are worth noting. First, since the House passed this bill in the last Congress, the District of Columbia has revised its parole guidelines, consistent with certain recommendations made by Senator ARLEN SPECTER and U.S. attorney for the District of Columbia, Joseph diGenova. Most important, these revised guidelines are modeled closely after current Federal guidelines. Second, the overcrowding problem in the District has resulted in an increased number of District of Columbia inmates being transferred to Federal prisons. Third, Congress recently passed the Comprehensive Crime Control Act of 1983, which would abolish Federal parole and the U.S. Parole Commission in 1991. Fourth, section 24-209 became law almost 50 years ago and 40 years prior to the Home Rule Act.

Lawsuits filed in response to this provision remain unsolved and continue to consume unnecessary time and expense. This legislation provides a practical and logically sound remedy to this longstanding problem and I believe that now is the time for this body to pass this legislation and to save the local government and the local and Federal courts further time and money.

Mr. Speaker, I would add that this bill is indeed a step toward home rule. But also, it is a cost efficient step. If passed, this legislation is estimated to save the Federal Government over $1.3 million on the average for the first 5 years after its passage. Thereafter, the District government will underwrite any expenses attached to the execution of its parole authority.

Thus, for the reasons which I've outlined, I strongly urge my colleagues to adopt this measure.

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Mr. FAUNTROY. Mr. Speaker, I move to strike the last word.

Mr. Speaker, I rise in support of all three bills that have been reported by the Committee on the District of Columbia. I want to focus now, first of all, of course, upon H.R. 2050 which transfers parole authority over the District of Columbia offenders housed in Federal prisons from the U.S. Parole Commission to the District of Columbia Parole Board.

Mr. Speaker, currently there are over 1,400 D.C. Code offenders housed in Federal Bureau of Prisons facilities. Male D.C. Code offenders are placed in Federal facilities for selective custody, and various other reasons. Female D.C. Code offenders sentenced to greater than 1-year terms are placed in Federal facilities due to the absence of a facility specifically for female offenders here in Washington. Most of these female offenders are confined at Alderson, WV, whence the chairman of the subcommittee, Mr. DYMALLY, has just come. As he has pointed out to you, it is over 300 miles away from the District of Columbia.

Mr. DYMALLY. Mr. Speaker, will the gentleman yield?

Mr. FAUNTROY. I yield to the gentleman.

Mr. DYMALLY. I thank the gentleman for yielding.

Mr. Speaker, I am pleased to inform the gentleman that some of the inmates were most appreciative of your interest in this inconvenience which their families suffer, and have asked me to convey to you the hope that you would continue this fight to have a facility constructed in the District of Columbia.

Mr. FAUNTROY. I thank the gentleman for his leadership in moving H.R. 2050 through the committee process and now to the floor. I am sure that their hopes will be realized as a result of the vote of the House today.

Mr. Speaker, at present, under the District Code, the determination of parole jurisdiction is controlled by the place of incarceration rather than the jurisdiction of conviction. The result is that the District Board of Parole makes parole decisions for District offenders when they are housed in District institutions, and the U.S. Parole Commission makes parole decisions for District Code offenders when they are housed in Federal institutions.

Mr. Speaker, H.R. 2050 expands the authority of the District of Columbia government by providing it with the right to determine paroles for District Code offenders whether held in District or Federal facilities.

Mr. Speaker, H.R. 2946 establishes an independent jury system for the District of Columbia, our local court. This legislation requested by the Superior Court of the District of Columbia and concerned groups will provide for an efficient jury system for the superior court. This change will help make jury duty for the District of Columbia citizens a more worthwhile civic duty.

The third measure, H.R. 3578, as amended, Mr. Speaker, will require criminal prosecutions concerning violations of the laws of the District of Columbia to be conducted in the name of the District. The bill further provides permanent authority for Hearing Commissioners in the District and modifies certain procedures of the District of Columbia Judicial Nomination Commission, and the District Commission on Judicial Disabilities and Tenure. Mr. Speaker, all three bills further the independence of the District of Columbia judicial and criminal justice system and thereby enhance self-government.

I wish to commend the chairman of the District Committee, Congressman RONALD DELLUMS, and the ranking minority member, Mr. MCKINNEY. I would also like to thank Mr. DYMALLY, chairman of the Subcommittee on Judiciary and Education, and Mr. BLILEY, the ranking minority member.

Mr. Speaker, as you know, I represent more people, taxpayers, than any single voting Member of the House. Indeed, I represent more people who pay taxes in this country than elect seven Senators, because there are, as you know, more citizens in the District of Columbia than reside in seven States in the Union. So I would prefer to have been here not simply to expand the parole authority of the District government with respect to those convicted of code violations in this city, but to turn the entire system over to the local citizenry inasmuch as we, alone among Americans, are continued denial of the right to representation in the U.S. House and Senate.

I would prefer to have passed a measure that would turn the entire court system over to the superior court and therefore allow us to fashion our own jury system procedures. Of course, I would certainly have preferred to have passed H.R. 3578, as amended, as a function of a locally elected mayor and city council, thus providing us the kind of permanent authority that we request here in terms of control of our criminal prosecutions.

Mr. Speaker, I yield back the balance of that time that those two Senators who would have been speaking, rather those Representatives who would have been speaking, had they been freed from the tyranny of taxation without representation here in the District of Columbia, as I am not.

Mr. BLILEY. Mr. Speaker, as the ranking minority member of the Judiciary and Education Subcommittee of the Committee on the District of Columbia, I rise in support of H.R. 2050.

As explained by the distinguished chairman of the subcommittee, Mr. DYMALLY, this bill is a question of equity. The fact is that some convicted District of Columbia criminals are sent to the District's prison at Lorton and some are sent to various Federal institutions around the country. For those people at Lorton, the District Parole Board has jurisdiction, for those men and women in Federal prisons, the Federal Parole Board and its rules and regulations apply.

Since the two parole authorities with responsibility for District prisoners have different criteria and regulations as well as the fact that different conditions may lead to different attitudes and therefore different behavior patterns affecting parole possibilities, I believe that it is a simple question of equity that the District of Columbia have sole parole authority over its own citizens.

I speak for the minority members of the committee when I say that this legislation is fair and equitable for the people and the

government of the District of Columbia and we endorse its passage.

Mr. DELLUMS. Mr. Speaker, I move the previous question on the bill.

The previous question was ordered.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DELLUMS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

DISTRICT OF COLUMBIA JURY SYSTEM ACT

Mr. DELLUMS. Mr. Speaker, by direction of the Committee on the District of Columbia, I call up the bill (H.R. 2946) to establish an independent jury system for the Superior Court of the District of Columbia, and ask unanimous consent that the bill be considered in the House as in the Committee of the Whole.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the bill, as follows:

H.R. 2946

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "District of Columbia Jury System Act".

SEC. 2. ESTABLISHMENT OF DISTRICT OF COLUMBIA JURY SYSTEM.

Chapter 19 of title 11 of the District of Columbia Code is amended to read as follows:

"CHAPTER 19. JURIES AND JURORS

Sec.
"11-1901. Declaration of policy.
"11-1902. Definitions.
"11-1903. Prohibition of discrimination.
"11-1904. Jury system plan.
"11-1905. Master juror list.
"11-1906. Qualification of jurors.
"11-1907. Summoning of prospective jurors.
"11-1908. Exclusion from jury service.
"11-1909. Deferral from jury service.
"11-1910. Challenging compliance with selection procedures.
"11-1911. Length of service.
"11-1912. Juror fees.
"11-1913. Protection of employment of jurors.
"11-1914. Preservation of records.
"11-1915. Fraud in the selection process.
"11-1916. Grand jury; additional grand jury.
"11-1917. Coordination and cooperation of courts.
"11-1918. Effect of invalidity.

"CHAPTER 19. JURIES AND JURORS

"§ 11-1901. Declaration of policy.

"A jury selection system is hereby established for the Superior Court of the District of Columbia. All litigants entitled to trial by jury shall have the right to grand and petit juries selected at random from a fair cross section of the residents of the District of Columbia. In accordance with the provisions of this chapter, all qualified individuals shall have the opportunity to be considered for service on grand and petit juries in the District of Columbia and shall be obligated to serve as jurors when summoned for that purpose.

"§ 11-1902. Definitions.

"For purposes of this chapter, the following terms have the following meanings:

"(1) The term 'Board of Judges' means the chief judge and the associate judges of the Superior Court of the District of Columbia.

"(2) The term 'chief judge' means the chief judge of the Superior Court of the District of Columbia.

"(3) The term 'clerk' means the clerk of the Superior Court of the District of Columbia or any deputy clerk.

"(4) The term 'Court' means the Superior Court of the District of Columbia and may include any judge of the Court acting in an official capacity.

"(5) The term 'juror' means (A) any individual summoned to Superior Court for the purpose of serving on a jury; (B) any individual who is on call and available to report to Court to serve on a jury upon request; and (C) any individual whose service on a jury is temporarily deferred.

"(6) The term 'jury' includes a grand or petit jury.

"(7) The term 'jury system plan' means the plan adopted by the Board of Judges of the Court, consistent with the provisions of this chapter, to govern the administration of the jury system.

"(8) The term 'master juror list' means the consolidated list or lists compiled and maintained by the Board of Judges of the District of Columbia Courts which contains the names of prospective jurors for service in the Superior Court of the District of Columbia.

"(9) The term 'random selection' means the selection of names of prospective jurors in a manner immune from the purposeful or inadvertent introduction of subjective bias, so that no recognizable class of the individuals on the list or lists from which the names are being selected can be purposefully or inadvertently included or excluded.

"(10) The term 'resident of the District of Columbia' means an individual who has resided or has been domiciled in the District of Columbia for not less than six months.

"§ 11-1903. Prohibition of discrimination.

"A citizen of the District of Columbia may not be excluded or disqualified from jury service as a grand or petit juror in the District of Columbia on account of race, color, religion, sex, national origin, ancestry, economic status, marital status, age, or (except as provided in this chapter) physical handicap.

"§ 11-1904. Jury System Plan.

"(a) The Board of Judges shall adopt, implement, and as necessary modify, a written jury system plan for the random selection and service of grand and petit jurors in the Superior Court consistent with the provisions of this chapter. The adopted plan and any modifications shall be subject to a 30-day period of review by Congress in the manner provided for an act of the Council under section 602(c)((1) of the District of Columbia Self-Government and Government Reorganization Act. The plan shall include—

"(1) detailed procedures to be followed by the clerk of the Court in the random selection of names from the master juror list;

"(2) provisions for a master jury wheel (or other device of like purpose and function) which shall be emptied and refilled at specified intervals, not to exceed 24 months;

"(3) provisions for the disclosure to the parties and the public of the names of individuals selected for jury service, except in cases in which the chief judge determines that confidentiality is required in the interest of justice; and

"(4) procedure to be followed by the clerk of the Court in assigning individuals to grand and petit juries.

"(b) The jury system plan shall be administered by the clerk of the Court under the supervision of the Board of Judges.

"§ 11-1905. Master juror list.

"(a) The jury system plan shall provide for the compilation and maintenance by the Board of Judges of a master juror list from which names of prospective jurors shall be drawn. Such master juror list shall consist of the list of District of Columbia voters, individuals who submit their names to the Court for inclusion on the master juror list, and names from such other appropriate sources and lists as may be provided in the jury system plan.

"(b) Notwithstanding any other provision of law, upon request of the Board of Judges any person having custody, possession, or control of any list required under subsection (a) shall provide such list to the Court, at cost, at all reasonable times. Each list shall contain the names and addresses of individuals on the list. Any list obtained by the Court under the provisions of this chapter may be used by the Court only for the selection of jurors pursuant to this chapter.

"(c) Not less than once each year, the Board of Judges shall give public notice to the citizens of the District of Columbia that individuals may be included on the master juror list by submission of their names and addresses to the clerk of the Court. Such public notice shall be given through such means as will reasonably assure as broad a dissemination as possible.

"§ 11-1906. Qualification of Jurors.

"(a) The jury system plan shall provide for procedures for the random selection and qualification of grand and petit jurors from the master juror list. Such plan may provide for separate or joint qualification and summoning processes.

"(b)(1) An individual shall be qualified to serve as a juror if that individual—

"(A) is a resident of the District of Columbia;

"(B) is a citizen of the United States;

"(C) has attained the age of 18 years; and

(D) is able to read, speak, and understand the English language.

"(2) An individual shall not be qualified to serve as a juror—

"(A) if determined to be incapable by reason of physical or mental infirmity of rendering satisfactory jury service; or

"(B) if that individual has been convicted of a felony or has a pending felony or misdemeanor charge, except that an individual disqualifed for jury service by reason of a felony conviction may qualify for jury service not less than one year after the completion of the term of incarceration, probation, or parole following appropriate certification under procedures set out in the jury system plan.

"(3) Any determination regarding qualification for jury service shall be made on the

basis of information provided in the juror qualification form and any other competent evidence.

"(c)(1) The jury system plan shall provide that a juror qualification form be mailed to each prospective juror. The form and content of such juror qualification form shall be determined under the plan. Notarization of the juror qualification form shall not be required.

"(2) An individual who fails to return a completed juror qualification form as instructed may be ordered by the Court to appear before the clerk to fill out such form, to appear before the Court and show cause why he or she should not be held in contempt for failure to submit the qualification form, or both. An individual who fails to show good cause for such failure, or who without good cause fails to appear pursuant to a Court order, may be punished by a fine of not more than $300, by imprisonment for not more than seven days, or both.

"(d) An individual who intentionally misrepresents a material fact on a juror qualification form for the purpose of avoiding or securing service as a juror may be punished by a fine of not more than $300, by imprisonment for not more than 90 days, or both.

"§ 11-1907. Summoning of Prospective Jurors.

"(a) At such times as are determined under the jury system plan, the Court shall summon or cause to be summoned from among qualified individuals under section 11-1906 sufficient prospective jurors to fulfill requirements for petit and grand jurors for the Court. A summons shall require a propsective juror to report for possible jury service at a specified time and place unless advised otherwise by the Court. Service of prospective jurors may be made personally or by first-class, registered, or certified mail as determined under the plan.

"(b) A prospective juror who fails to appear for jury duty may be ordered by the Court to appear and show cause why he or she should not be held in contempt for such failure to appear. A prospective juror who fails to show good cause for such failure, or who without good cause fails to appear pursuant to a Court order, may be punished by a fine of not more than $300, by imprisonment for not more than seven days, or both.

"§ 11-1908. Exclusion from jury service.

"(a) Subject to the provisions of this section and of sections 11-1903, 11-1906, and 11-1909, no individual or class of individuals may be disqualified, excluded, excused, or exempt from service as a juror.

"(b) An individual summoned for jury service may be: (1) excluded by the Court on the ground that that individual may be unable to render impartial jury service or that his or her service as a juror would be likely to disrupt the proceedings; (2) excluded upon peremptory challenge as porvided by law; (3) excluded pursuant to the procedure specified by law upon a challenge by any party for good cause shown; or (4) excluded upon determination by the Court that his or her service as a juror would be likely to threaten the secrecy of the proceedings, or otherwise adversely affect the integrity of jury deliberations. No person shall be excluded under clause (4) of this subsection unless the judge, in open Court, determines that such exclusion is warranted and that exclusion of that individual will not be inconsistent with sections 11-1901 and 11-1903 of this chapter.

"(c) An individual excluded from a jury shall be eligible to sit on another jury if the basis for the initial exclusion would not be relevant to his or her ability to serve on such other jury. The procedures for challenges to and review of exclusions from jury service shall be set forth in the jury system plan.

"§ 11-1909. Deferral from jury service.

"A qualified prospective juror may be deferred from jury service only upon a showing of undue hardship, extreme inconvenience, public necessity, or temporary physical or mental disability which would affect service as a juror. The procedure for requesting a deferral from jury service and the procedure and basis for granting a deferral shall be set forth in the master plan.

"§ 11-1910. Challenging compliance with selection procedures.

"(a) A party may challenge the composition of a jury by a motion for appropriate relief. A challenge shall be brought and decided before any individual juror is examined, unless the Court orders otherwise. The motion shall be in writing, supported by affidavit, and shall specify the facts constituting the grounds for the challenge. If the Court so determines, the motion may be decided on the basis of the affidavits filed with the challenge. If the Court orders trial of the challenge, witnesses may be examined on oath by the Court and may be so examined by either party.

"(b) If the Court determines that in selecting a grand or petit jury there has been a substantial failure to comply with this chapter, the Court shall stay the proceedings pending the selection of a jury in confirmity with this chapter, quash the indictment, or grant other appropriate relief.

"(c) The procedures prescribed by this section are the exclusive means by which a person accused of a crime, the District of Columbia, the United States, or a party in a civil case may challenge a jury on the ground that the jury was not selected in conformity with this chapter. Nothing in this section shall preclude any person from pursuing any other remedy, civil or criminal, which may be available for the vindication or enforcement of any law prohibiting discrimination on account of race, color, religion, sex, national origin, economic status, marital status, age, or physical handicap in the selection of individuals for service on grand or petit juries.

"§ 11-1911. Length of service.

"The length of service for grand and petit jurors shall be determined by the master jury plan. In any twenty-four month period an individual shall not be required to serve more than once as a grand or petit juror except as may be necessary by reason of the insufficiency of the master juror list or as ordered by the Court.

"§ 11-1912. Juror fees.

"(a) Notwithstanding section 602(a) of the District of Columbia Self-Government and Governmental Reorganization Act, grand and petit jurors serving in the Superior Court shall receive fees and expenses at rates established by the Council of the District of Columbia, except that such fees and expenses may not exceed the respective rates paid to such jurors in the federal system.

"(b) A petit or grand juror receiving benefits under the laws of employment security of the District of Columbia shall not lose such benefits on account of performance of juror service.

"(c) Employees of the United States or of any State or local government who serve as grand or petit jurors and who continue to receive regular compensation during the period of jury service shall not be compensated for jury service. Amounts representing reimbursement of expenses incurred in connection with jury service may be paid to such employees to the extent provided in the jury system plan.

"§ 11-1913. Protection of employment of jurors.

"(a) An employer shall not deprive an employee of employment, threaten, or otherwise coerce an employee with respect to employment because the employee receives a summons, responds to a summons, serves as a juror, or attends Court for prospective jury service.

"(b) An employer who violates subsection (a) is guilty of criminal contempt. Upon a finding of criminal contempt an employer may be fined not more than $300, imprisoned for not more than 30 days, or both, for a first offense, and may be fined not more than $5,000, imprisoned for not more than 180 days, or both, for any subsequent offense."

"(c) If an employer discharges an employee in violation of subsection (a), the employee within 9 months of such discharge may bring a civil action for recovery of wages lost as a result of the violation, for an order of reinstatement of employment, and for damages. If an employee prevails in an action under this subsection, that employee shall be entitled to reasonable attorney fees fixed by the court.

"§ 11-1914. Preservation of records.

"(a) All records and lists compiled and maintained in connection with the selection and service of jurors shall be preserved for the length of time specified in the jury system plan.

"(b) The contents of any records or lists used in connection with the selection process shall not be disclosed, except in connection with the preparation or presentation of a motion under § 11-1910, or until all individuals selected to serve as grand or petit jurors from such lists have been discharged.

"§ 11-1915. Fraud in the selection process.

"An individual who commits fraud in the processing or selection of jurors or prospective jurors, either by causing any name to be inserted into any list maliciously or by causing any name to be deleted from any list maliciously (including malicious data entry or the altering of any data processing machine or any set of instructions or programs which control data processing equipment for such malicious purpose), is guilty of the crime of jury tampering, and, upon conviction, may be punished by a fine of not more than $10,000, imprisonment for not more than two years, or both. This section shall not limit any other provisions of law concerning the crime of jury tampering.

"§ 11-1916. Grand jury; additional grand jury.

"(a) A grand jury serving in the District of Columbia may take cognizance of all matters brought before it regardless of whether an indictment is returnable in the Federal or District of Columbia courts.

"(b) If the United States Attorney for the District of Columbia certifies in writing to the chief judge that an additional grand jury is required, the judge may in his or her discretion order an additional grand jury summoned which shall be drawn at such time as he or she designates. Unless discharged by order of the judge, the additional grand jury shall serve until the end of the term for which it is drawn.

"§ 11-1917. Coordination and Cooperation of Courts.

"To the extent feasible, the Superior Court and the United States District Court shall consider the respective needs of each court in the qualification, selection, and service of jurors. Nothing in this chapter shall be construed to prevent such courts from entering into any agreement for sharing resources and facilities (including automated data processing hardware and software, forms, postage, and other resources).

"§ 11-1018. Effect of Invalidity.

"If any provision of this Act or the application of that provision is held invalid, such invalidity shall not affect any other provision or application of this Act which can be given effect without the invalid provision or application.".

SEC. 3 TECHNICAL AND CONFORMING AMENDMENTS.

Section 1869(f) of title 28, United States Code, is amended by striking out "except that for purposes of sections 1861, 1862, 1866(c), 1866(d), and 1867 of this chapter such terms shall include the Superior Court of the District of Columbia".

SEC. 4. EFFECTIVE DATE.

(a) Except as provided in subsection (b), the provisions of this Act shall take effect 180 days after the date of enactment of this Act.

(b) Upon enactment of this Act, the Board of Judges shall have authority to promulgate and adopt a jury system plan in accordance with this Act and the Court and the clerk of the Court shall have authority to take all necessary actions preliminary to the assumption of the administration of an independent jury system under this Act.

Mr. DELLUMS. Mr. Speaker, I move to strike the last word. Mr. Speaker, this bill relieves the U.S. courts of the task of calling jurors to serve at trials in local District of Columbia courts. The present practice is a holdover from 1970, when the U.S. court handled felony trials and appeals for local offenses. In 1970, the Congress created a trial court and appeals court especially to handle such local cases. If H.R. 2946 becomes law, the local court will handle just the local cases, and the U.S. district court would just call jurors for Federal cases.

A full explanation of the bill will be given by my distinguished colleague, the gentleman from California [Mr. DYMALLY], who chairs the Subcommittee on Judiciary and Education, when he is recognized.

Mr. Speaker, with that brief explanation, I yield back the balance of my time.

Mr. DYMALLY. Mr. Speaker, I move to strike the last word.

Mr. Speaker, this bill is quite simple. H.R. 2946 is a bill to establish an independent jury system for the Superior Court of the District of Columbia.

In 1970, this body and Congress passed the District of Columbia Court Reform Act, which became effective in 1971. We established a D.C. court system expressly analogous to State court systems. After nearly 15 years of self-management and competitive efficiency, the court is prepared to administer its own jury system, independent of the U.S. District Court for the District of Columbia.

Most important, it is quite capable of doing so and at the same time continuing to work closely and cooperate with the U.S. District Court for the District of Columbia. Hence, the local district court is "strongly supportive" of this transition. As do State courts, the local courts here have local needs which, like State courts, they should have the authority to address.

Against this backdrop, I urge my fellow Members of this august body to adopt H.R. 2946.

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Mr. BLILEY. Mr. Speaker, I move to strike the last word.

Mr. Speaker, I rise as a cosponsor and as the ranking member of the Subcommittee on Judiciary and Education in strong support of H.R. 2946.

This legislation is needed for the District of Columbia court system to effectively and efficiently deal with the large caseload of court proceedings that it is faced with. Last year this body authorized seven new superior court judges for the District of Columbia. The addition of these positions has overstrained the limited capacity of the present jury selection system employed by the District courts.

The courts have also instituted the "one day, one trial" method of jury duty which places larger demands on the panels of jury selection than the traditional method of jury service. I support one day, one trial and I am proud of the work that the chairman of the subcommittee and I did in achieving this carefully written bipartisan bill. The gentleman from California and myself worked hard on this legislation and I feel confident that I speak for the minority on the committee when I say that we enthusiastically support this bill.

Mr. DYMALLY. Mr. Speaker, will the gentleman yield?

Mr. BLILEY. I am happy to yield to the gentleman from California.

Mr. DYMALLY. Mr. Speaker, I want to take this opportunity to express my deep gratitude to the gentleman from Virginia [Mr. BLILEY] for his support of this legislation and other legislation affecting the judiciary in the District of Columbia. The gentleman from Virginia has been most cooperative in the committee's deliberations, and I wish to express my thanks to him.

Mr. BLILEY. Mr. Speaker, I thank the gentleman from California [Mr. DYMALLY], and I yield back the balance of my time.

Mr. DELLUMS. Mr. Speaker, I move to strike the last word.

Mr. Speaker, I rise simply to compliment the gentleman from California [Mr. DYMALLY] and the gentleman from Virginia [Mr. BLILEY] for their diligent activity and their conscientious efforts as the chairperson of the Subcommittee on Judiciary and Education and the ranking minority member of that subcommittee. Both of these gentlemen are very delightful members to work with. They are conscientious, hard-working members who are very diligent about the business of trying to rectify many of the inadequacies that exist between the Federal Government and the residents of the District of Columbia.

My purpose in rising was only to make that statement, Mr. Speaker, and I yield back the balance of my time.

Mr. BLAZ. Mr. Speaker, I move to strike the last word.

Mr. Speaker, I present for inclusion in the RECORD various items of correspondence from the Department of Justice objecting to the legislation presently being considered. Those items are as follows:

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, October 28, 1985.

Hon. ROBERT H. MICHEL,
Minority Leader,
U.S. House of Representatives,
Washington, DC.

DEAR CONGRESSMAN MICHEL: The following bills are scheduled for floor action on Monday, October 28, 1985 on the District Calendar:

H.R. 2050.—a bill to transfer parole authority over District of Columbia offenders housed in federal prison from the United States Parole Commission to the District of Columbia Parole Board.

H.R. 2946.—a bill to establish an independent jury system for the Superior Court of the District of Columbia.

H.R. 3578.—(We are not sure which bill H.R. 3578 or H.R. 3592 will be scheduled for floor action. Originally, H.R. 3370 was introduced on September 19, 1985. A staff markup resulted in H.R. 3578 being introduced on October 17, which the Committee reported out. Subsequent to the Committee markup, H.R. 3592, which is a clean version of H.R. 3578 with additional amendments, was introduced.)—a bill to provide permanent authority for hearing commissioners in the District of Columbia courts, to modify certain procedures of the District of Columbia courts, to modify certain procedures of the District of Columbia Judicial Nomination Commission and the District of Columbia Commission on Judicial Disabilities and Tenure, and for other purposes.

The Department of Justice has sent letters of opposition on H.R. 2050 and H.R. 2946 to the Committee on the District of Columbia (copies attached).

H.R. 2050

The Department opposes H.R. 2050 for several reasons:

(1) Place of incarceration rather than jurisdiction of correction determines parole jurisdiction under the D.C. Code.

(2) The policies and procedures of the D.C. Board of Parole were called into serious question during a hearing on similar legislation (H.R. 3369) during the 98th Congress.

(3) New guidelines established by D.C. Board of Parole in the Spring of 1985 have

not yet been analyzed for efficiency and effectiveness.

(4) The U.S. Sentencing Commission established under P.L. 98-473 (Comprehensive Crime Control Act of 1984) and recently confirmed by the Senate will have to address this issue as it determines how to phase out the U.S. Parole Commission (abolished under P.L. 98-473).

(5) A piecemeal approach to the D.C. sentencing and correctional practices is a real and direct threat to law enforcement interests in the District, especially since August of 1985 when the Federal Bureau of Prisons started to assume custody of all D.C. Code violators sentenced in D.C. Superior Court to assist the District government in responding to a court order to reduce overcrowding at its correctional facilities.

H.R. 2946

While H.R. 2946 contains significant improvements over the jury selection system now in effect in the federal courts, e.g. broadening the base of persons who can be summoned for jury duty, narrowing the number of automatic exclusions from jury service, and increasing the penalties for certain fraudulent conduct in the jury selection process, we do not believe that a bifurcated approach to the D.C. jury selection system—one for the local trial court and one for the federal trial court—is a prudent or efficient one. Such a bifurcated approach would entail administrative difficulties, duplication of effort and additional cost to the federal government. For these reasons, we oppose H.R. 2946 in its present form, but we would consider changes to the Jury Selection and Service Act to incorporate the improvements contained in H.R. 2946.

H.R. 3578

Although this Department has not been asked to comment on H.R. 3370, H.R. 3578 or H.R. 3592, we do have concerns about several provisions contained in these related bills. H.R. 3592 (introduced as a clean version of H.R. 3578 but with several technical amendments) appears to be the bill scheduled for floor action. We do object to Section 2 of this bill which requires the U.S. Attorney for District of Columbia to compile an annual report by category of offense and conviction of D.C. Code violators, and violators of U.S. law exclusive to the District of Columbia. The material is now available and a matter of public record. To have the local U.S. Attorney's office utilize the manpower and resources necessary to compile and publish this report would create serious budgetary problems for that office—an issue the Committee failed to address.

Sections 10-11 of H.R. 3592 would govern public access to materials of the Judicial Nomination Commission. It is our belief that confidentiality promotes candor in such proceedings but we recognize that there may be instances where total secrecy is unfair. Section 13 requires in part that the record and materials filed in connection with the Judicial Disability and Tenure Commission be kept confidential unless the judge whose conduct or health is at issue authorizes disclosure. It is not clear whether the judge can authorize disclosure of some of the information while suppressing the rest. If so, this could result in presenting a very one-sided picture to the public. We suggest that either of the following approaches would be preferable:

(1) requiring a judge who wants part of the record to be made public to consent to all of it being made public, or

(2) following the rule which applies in grand jury proceedings, i.e., the record is kept secret and the decision makers are sworn to secrecy, but witnesses may tell the public about their testimony and submissions if they wish.

We would appreciate any assistance you could give in making our views known on these issues.

The Office of Management and Budget has advised this Department and that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

PHILLIP D. BRADY,
Acting Assistant Attorney General.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, September 27, 1985.

Hon. RONALD DELLUMS,
Chairman, Committee on the District of Columbia, Washington, DC.

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department of Justice on H.R. 2050, a bill "to give to the Board of Parole of the District of Columbia exclusive power and authority to make parole determination concerning prisoners convicted of violating any law of the District of Columbia, or any law of the United States applicable exclusively to the District." As set forth in more detail below, the Department of Justice believes that the change sought by this bill would not improve the law enforcement and corrections programs in the District of Columbia and we therefore oppose this bill. Furthermore, we believe that Congress should not undertake piecemeal revisions of the D.C. corrections programs until completion of a thorough and comprehensive review of all sentencing and correctional practices.

At present under the D.C. Code, the determination of parole jurisdiction is controlled by the place of incarceration rather than the jurisdiction of conviction. The result is that the D.C. Board of Parole makes parole decisions for D.C. Code offenders when they are housed in D.C. institutions and the United States Parole Commission makes parole decisions for D.C. Code offenders when they are housed in federal institutions. At the present time over 1,400 D.C. Code offenders are held in Federal Bureau of Prisons facilities. This represents the designed capacity of three modern correctional institutions. Although some of these are in federal custody because of their extremely violent criminal histories or to separate them from other District of Columbia inmates, the bulk of them are in federal custody primarily because of shortages of space to house inmates in the District of Columbia system. Thus, two factors not addressed in H.R. 2050 are the real burden to the Federal Bureau of Prisons of confining this large group of local offenders and the serious problems involved in adding these geographically dispersed inmates to the D.C. Parole Board's caseload.

In the 1930's when the D.C. Board of Parole was established, this divided jurisdictional scheme may have met correctional needs. The Comprehensive Crime Control Act of 1983 abolishes the United States Parole Commission in 1991, however, and legislative attention must clearly be given to the questions of future parole responsibility for D.C. Code offenders designated to Federal institutions. At the same time every effort must be made to insure that the District of Columbia will provide adequate prison space to house its sentenced criminals.

A larger question is what role should parole serve as a correctional tool in the District of Columbia? The legislative history of the Comprehensive Crime Control Act of 1984, P.L. 98-473, clearly reflects the Congressional determination that the "rehabilitation model" upon which the Federal sentencing and parole system was based is no longer valid. S. Rep. No. 225, 98th Congress, 1st Sess. 38 (1983). Based upon a study spanning a decade conducted by the National Commission on Reform of Federal Criminal Law, it was concluded that the Federal sentencing and parole system resulted in significant disparities in criminal sentences. As stated in the Senate Report:

"The shameful disparity in criminal sentences is a major flaw in the existing criminal justice system, and makes it clear that the system is ripe for reform. Correcting our arbitrary and capricious method of sentencing will not be a panacea for all of the problems which confront the administration of criminal justice, but it will constitute a significant step forward.

"The [Comprehensive Crime Control Act of 1984 (CCCA)] meets the critical challenges of sentencing reform. The [CCCA's] sweeping provisions are designed to structure judicial sentencing discretion, eliminate indeterminate sentencing, phase out parole release, and make criminal sentencing fairer and more certain. The current effort constitutes an important attempt to reform the manner in which we sentence convicted offenders. The Committee believes that the [CCCA] represents a major breakthrough in this area." *Id.* at 65.

The current D.C. sentencing and parole system does not reflect this new understanding of the limitations of the "rehabilitation model" as described above.

In addition, the District of Columbia parole system has other demonstrated problems. When we reviewed similar legislation two years ago [H.R. 3369], this matter was discussed in detail in our letter dated July 25, 1983 from Assistant Attorney General Robert A. McConnell to you. The Department noted at that time that the D.C. Board of Parole, according to its 1982 annual report, granted parole at initial hearings to 61 percent of the adult offenders and that 73 percent of the remainder were granted parole upon a rehearing. The Board also reported however, that based upon a study of a selected sample of 322 parolees released on parole between 1977 and 1979, 52 percent were re-arrested during the first two years of parole supervision. Of the parolees who were re-arrested, 77 percent were convicted for crimes committed while on parole. Given the very high percentage of parolees released at the time of initial parole consideration and the very high rate of recidivist criminal activity among those released, the policies and procedures of the D.C. Board of Parole were called into serious question.

We also pointed out that despite the large number of D.C. parolees who commit crimes following parole release, parole apparently was revoked in a relatively small percentage of the cases. In that regard, the D.C. Board of Parole reported that of those parolees in its 1977-1979 sample who were convicted of crimes while on parole, parole was revoked because of the new offense in less than one half of the cases. Although the reason for this statistic was not explained, it appears that it may be attributed to the D.C. Parole Board policy of not issuing parole violator warrants for certain offenses. In this regard, the Board listed in its 1982 Annual Report

the types of offenses it terms "Eligible Offenses" for purposes of issuance of parole violator warrants. It appears that as a matter of policy, the Board will not issue parole violator warrants for burglary of commercial establishments, possession of firearms (unless the defendant is arrested with the weapon in his hand or on his person), grand larceny, embezzlement, fraud, forgery and uttering and for a host of other violations of the District of Columbia Code or the United States Code.

This apparent policy which allows substantial numbers of parolees to continue on parole even after arrest and conviction of serious crimes was of significant concern to us in the past. If these matters have not yet been completely remedied, and it may be too early to conclude that they have, then similar concern is presently warranted. Under H.R. 2050, the jurisdiction of the D.C. Board of Parole would be substantially expanded to include those D.C. Code offenders presently under the jurisdiction of the U.S. Parole Commission. These offenders, however, include some of the most dangerous and violent criminals convicted in the District of Columbia. Premature release of such individuals pursuant to existing parole policies would pose a real and direct threat to law enforcement interests in the District of Columbia.

We believe it is time for a thorough legislative review of District of Columbia sentencing and correctional practices. A major expansion of the capacity of D.C. correctional facilities is essential. The Federal Bureau of Prisons is seriously overcrowded and can no longer accept the overload of the District of Columbia system. This is especially true in light of the increased D.C. prison population that would result, at least temporarily, from a more responsibly run parole system. Replacement of the parole system in the District of Columbia by a sentencing guideline system similar to that adopted by Congress in the Comprehensive Crime Control Act of 1984 should be considered. While expansion of the D.C. inmate capacity must begin at once, other changes can be more thoroughly considered than is done in H.R. 2050.

The Office of Management and Budget has advised this Department that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

PHILLIP D. BRADY,
Acting Assistant Attorney General.

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AND INTERGOVERNMENTAL AFFAIRS,
Washington, DC, July 31, 1985.

Hon. RONALD V. DELLUMS,
Chairman, Committee on District of Columbia, U.S. House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: This is to proffer the views of the Department of Justice on H.R. 2946, a bill that would establish an independent jury selection system for the Superior Court of the District of Columbia. While we believe that some of the changes from current law contained in H.R. 2946 would constitute significant improvements over the jury selection system now in effect in the federal courts, we oppose the bill for the reasons set forth below.

Jury selection for both the Superior Court of the District of Columbia and the United States District Court for the District of Columbia is now governed by a single process established by the Jury Selection and Service Act (28 U.S.C. 1861, *et seq.*) and administered by the United States District Court for the District of Columbia. If H.R. 2946 were enacted, there would exist within the District of Columbia two separate jury selection systems—one for the local trial court and one for the federal trial court. Inevitably, such a bifurcated approach would entail administrative difficulties, duplication of effort, and additional cost to the federal government, notwithstanding the provision of the bill that encourages the federal and local courts to share resources and facilities to the extent feasible.

H.R. 2946 would improve the current jury selection system by broadening the base of persons who can be summoned for jury duty, by narrowing the number of automatic exclusions from jury service, and by increasing the penalties for certain fraudulent conduct in the jury selection process. However, we are not persuaded that the prospect of such advances warrants the establishment of another jury selection system in the District of Columbia, with all of the drawbacks that such a course would entail. Rather, we think the better course would be to consider amending the Jury Selection and Service Act to incorporate the improvements contained in H.R. 2946. Such an approach would improve the jury selection process not only in the Superior Court but in all federal courts. Equally important, it would preserve the unified selection system currently in effect in the District of Columbia, thereby avoiding the administrative and financial costs of a bifurcated system.

The Office of Management and Budget has advised that there is no objection to the submission of this report from the standpoint of the Administration's program.

Sincerely,

PHILLIP D. BRADY,
Acting Assistant Attorney General.

Mr. DELLUMS. Mr. Speaker, I move the previous question on the bill.

The previous question was ordered.

The bill was ordered to be engrossed and read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DELLUMS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

DISTRICT OF COLUMBIA JUDICIAL EFFICIENCY AND IMPROVEMENT ACT OF 1985

Mr. DELLUMS. Mr. Speaker, by direction of the Committee on the District of Columbia, I call up the bill (H.R. 3578) to provide permanent authority for hearing commissioners in the District of Columbia courts, to modify certain procedures of the District of Columbia Judicial Nomination Commission and the District of Columbia Commission on Judicial Disabilities and Tenure, and for other purposes, and ask unanimous consent that the bill be considered in the House as in the Committee of the Whole.

The Clerk read the title of the bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The Clerk read the bill, as follows:

H.R. 3578

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "District of Columbia Prosecutorial and Judicial Efficiency Act of 1985".

SEC. 2. ANNUAL REPORT ON PROSECUTIONS.

Not later than March 1 of each year, the United States attorney for the District of Columbia shall compile and make available an annual report concerning prosecutions, under the laws of the District of Columbia and the laws of the United States applicable exclusively to the District of Columbia, conducted by the Office of the United States attorney for the District of Columbia in the previous calendar year. Such report shall include the number of prosecutions and convictions by category and nature of offense, and shall include any recommendations concerning the criminal justice system in the District of Columbia.

SEC. 3. HEARING COMMISSIONERS.

Section 11-1732 of title 11 of the District of Columbia Code is amended to read as follows:

"§ 11-1732. Hearing commissioners.

"(a) The chief judge of the Superior Court may appoint and remove hearing commissioners who shall serve in the Superior Court and perform the duties enumerated in subsection (c) of this section and such other duties as are consistent with the Constitution and laws of the United States and of the District of Columbia and are assigned by rule of the Superior Court.

"(b) No individual may be appointed or serve as a hearing commissioner under this section unless such individual has been a member of the bar of the District of Columbia for at least three years.

"(c) A hearing commissioner, when specifically designated by the chief judge of the Superior Court, may perform the following functions:

"(1) Administer oaths and affirmations and take acknowledgments.

"(2) Determine conditions of release and pretrial detention pursuant to the provisions of title 23 of the District of Columbia Code (relating to criminal procedures).

"(3) Conduct preliminary examinations in all criminal cases to determine if there is probable cause to believe that an offense has been committed and that the accused committed it.

"(4) Subject to the provisions of subsection (d), with the consent of the parties involved, make findings in uncontested proceedings, and in contested hearings in the civil, criminal, and family divisions of the Superior Court.

"(d)(1) With respect to proceedings and hearings under subsection (c)(4), a rehearing of the case, or a review of the hearing commissioner's findings, may be made by a judge of the appropriate division sua sponte and shall be made upon a motion of one of the parties, which motion shall be filed

within ten days after the judgment. An appeal to the District of Columbia Court of Appeals may be made only after a review hearing is held in the Superior Court.

"(2)(A) In any case brought under sections 11-1101 (1), (3), (10), or (11) involving the establishment or enforcement of child support, or in any case seeking to modify an existing child support order, where a hearing commissioner in the Family Division of the Superior Court finds that there is an existing duty of support, the hearing commissioner shall conduct a hearing on support, make findings, and enter judgment.

"(B) If in a case under subparagraph (A), the hearing commissioner finds that a duty of support exists and makes a finding that the case involves complex issues requiring judicial resolution, the hearing commissioner shall establish a temporary support obligation and refer unresolved issues to a judge.

"(C) In the cases under subparagraphs (A) and (B) in which the hearing commissioner finds that there is a duty of support and the individual owing that duty has been served or given notice of the proceedings under any application statute or court rule, if that individual fails to appear or otherwise respond, the hearing commissioner shall enter a default order.

"(D) A rehearing or review of the hearing commissioner's findings in a case under subparagraphs (A) and (B) may be made by a judge of the Family Division sua sponte. The findings of the hearing commissioner shall constitute a final order of the Superior Court.".

SEC. 4. APPOINTMENT OF EXECUTIVE OFFICER OF THE DISTRICT OF COLUMBIA COURTS.

Section 11-1703 of title 11 of the District of Columbia Code is amended—

(1) by striking out subsection (b);

(2) by redesignating subsection (c) as subsection (d); and

(3) by inserting after subsection (a) the following new subsection:

"(b) The Executive Officer shall be appointed, and subject to removal, by the Joint Committee on Judicial Administration with the approval of the chief judges of the District of Columbia courts. In making such appointment the Joint Committee shall consider experience and special training in administrative and executive positions and familiarity with court procedures.

"(c) The Executive Officer shall be a bona fide resident of the District of Columbia or become a resident not more than 180 days after the date of appointment.".

SEC. 5. MANDATORY RETIREMENT AGE OF JUDGES.

Section 431(c) of the District of Columbia Self-Government and Governmental Reorganization Act is amended by striking out "Seventy" and inserting in lieu thereof "seventy-four".

SEC. 6. APPOINTMENT PANEL FOR THE BOARD OF TRUSTEES OF THE PUBLIC DEFENDER SERVICE.

(a) COMPOSITION OF APPOINTMENT PANEL.—Section 303 of the District of Columbia Court Reform and Criminal Procedure Act of 1970 (D.C. Code, 1-2703) is amended in subsection (b)(1)—

(1) by striking out subparagraph (A); and

(2) by redesignating subparagraphs (B), (C), (D), and (E) as subparagraphs (A), (B), (C), and (D), respectively.

(b) PRESIDING OFFICER.—Section 303 of such Act (D.C. Code, 1-2703) is further amended in subsection (b)(2) by striking out "Chief Judge of the United States Court of Appeals for the District of Columbia Circuit" and inserting in lieu thereof "Chief Judge of the District of Columbia Court of Appeals".

SEC. 7. REORGANIZATION OF AUDIT RESPONSIBILITY.

(a) AUDITOR-MASTER.—Section 11-1724 of title 11 of the District of Columbia Code is amended—

(1) by striking out "(1) audit and state fiduciary accounts,"; and

(2) by respectively designating clauses (2) and (3) as clauses "(1)" and "(2)".

(b) REGISTER OF WILLS.—Section 11-2104(a) of title 11 of the District of Columbia Code is amended—

(1) in paragraph (2) by striking out "and" after the semicolon;

(2) in paragraph (3) by striking out the period and inserting in lieu thereof "; and"; and

(3) by inserting at the end thereof the following new paragraph:

"(4) audit and state fiduciary accounts.".

SEC. 8. ELIMINATION OF DUPLICATE JUDICIAL FINANCIAL REPORTING REQUIREMENT.

(a) TERMINATION OF FEDERAL DISCLOSURE REQUIREMENTS.—Section 303 of the Ethics in Government Act of 1978 (28 U.S.C. App. 301) is amended by inserting at the end thereof the following new subsection:

"(h) The provisions of this Act shall not apply to any judicial officer or employee of the Superior Court of the District of Columbia or the District of Columbia Court of Appeals.".

(b) TECHNICAL AND CONFORMING AMENDMENT.—Section 308(9) of such Act (28 U.S.C. App. 308(9)) is amended by striking out "courts of the District of Columbia".

SEC. 9. CERTIFICATION OF QUESTIONS OF LAW.

Subchapter II of Chapter 7, title 11, District of Columbia Code, is amended by inserting after section 11-722 the following new section:

"§ Sec. 11-723. Certification of Questions of Law.

"(a) The District of Columbia Court of Appeals may answer questions of law certified to it by the Supreme Court of the United States, a Court of Appeals of the United States, or the highest appellate court of any State, if there are involved in any proceeding before any such certifying court questions of law of the District of Columbia which may be determinative of the cause pending in such certifying court and as to which it appears to the certifying court there is no controlling precedent in the decisions of the District of Columbia Court of Appeals.

"(b) This section may be invoked by an order of any of the courts referred to in subsection (a) upon the court's motion or upon motion of any party to the cause.

"(c) A certification order shall set forth (1) the question of law to be answered; and (2) a statement of all facts relevant to the questions certified and the nature of the controversy in which the questions arose.

"(d) A certification order shall be prepared by the certifying court and forwarded to the District of Columbia Court of Appeals. The District of Columbia Court of Appeals may require the original or copies of all or such portion of the record before the certifying court as are considered necessary to a determination of the questions certified to it.

"(e) Fees and costs shall be the same as in appeals docketed before the District of Columbia Court of Appeals and shall be equally divided between the parties unless precluded by statute or by order of the certifying court.

"(f) The District of Columbia Court of Appeals may prescribe the rules of procedure concerning the answering and certification of questions of law under this section.

"(g) The written opinion of the District of Columbia Court of Appeals stating the law governing any questions certified under subsection (a) shall be sent by the clerk to the certifying court and to the parties.

"(h)(1) The District of Columbia Court of Appeals, on its own motion or the motion of any party, may order certification of questions of law to the highest court of any State under the conditions described in subsection (a).

"(2) The procedures for certification from the District of Columbia to a State shall be those provided in the laws of that State.".

SEC. 10. PUBLIC ACCESS TO MATERIALS OF JUDICIAL NOMINATION COMMISSION.

Section 434(c)(3) of the District of Columbia Self-Government and Governmental Reorganization Act is amended by striking out the last sentence and inserting in lieu thereof: "Information, records, and other materials furnished to or developed by the Commission in the performance of its duties under this section shall be privileged and confidential. Section 552 of title 5, United States Code, (known as the Freedom of Information Act) shall not apply to any such materials.".

SEC. 11. MEETINGS OF THE JUDICIAL NOMINATION COMMISSION.

Section 434(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act is amended by inserting at the end thereof "Meetings of the Commission may be closed to the public. Section 742 of this Act shall not apply to meetings of the Commission.".

SEC. 12. PUBLIC ANNOUNCEMENT OF JUDICIAL RECOMMENDATIONS.

Section 434(d) of the District of Columbia Self-Government and Governmental Reorganization Act is amended by inserting at the end thereof the following new paragraph:

"(4) Upon submission to the President, the name of any individual recommended under this subsection shall be made public by the Judicial Nomination Commission.".

SEC. 13. DISCLOSURE OF CERTAIN INFORMATION TO THE JUDICIAL NOMINATION COMMISSION.

Section 11-1528 of title 11, District of Columbia Code, is amended by striking out all of subsection (a) and inserting in lieu thereof the following:

"(a)(1) Subject to paragraph (2), the filing of papers with, and the giving of testimony before, the Commission shall be privileged. Subject to paragraph (2), hearings before the Commission, the record thereof, and materials and papers filed in connection with such hearings shall be confidential.

"(2)(A) The judge whose conduct or health is the subject of any proceedings under this subchapter may disclose or authorize the disclosure of any information under paragraph (1).

"(B) With respect to a prosecution of a witness for perjury or on review of a decision of the Commission, the record of hearings before the Commission and all papers filed in connection with such hearing shall be disclosed to the extent required for such prosecution or review.

"(C) Upon request, the Commission shall disclose, on a privileged and confidential basis, to the District of Columbia Judicial Nomination Commission any information under paragraph (1) concerning any judge being considered by such nomination commission for elevation to the District of Co-

lumbia Court of Appeals or for chief judge of a District of Columbia court.".

SEC. 14. REAPPOINTMENT TO JUDICIAL OFFICE.

Section 433(c) of the District of Columbia Self-Government and Governmental Reorganization Act is amended—

(1) in the first sentence by striking out "three months" and inserting in lieu thereof "six months"; and

(2) in the second sentence, by striking out "thirty" and inserting in lieu thereof "sixty".

SEC. 15. MODIFICATION OF JUDICIAL REAPPOINTMENT EVALUATION CATEGORIES.

Section 433(c) of the District of Columbia Self-Government and Governmental Reorganization Act is amended in the third sentence by striking out "exceptionally well-qualified or".

SEC. 16. SERVICES OF RETIRED JUDGES.

Section 11-1504(a) of title 11, District of Columbia Code, is amended by striking out paragraphs (2) and (3) and inserting after paragraph (1) the following new paragraph:

"(2) At any time prior to or after retirement, a judge may request recommendation from the District of Columbia Commission on Judicial Disabilities and Tenure (hereinafter in this section referred to as the "Commission") to be appointed as a senior judge in accordance with this section.".

SEC. 17. EXTENSION OF PERIOD FOR SUBMITTING JUDICIAL NOMINATIONS.

Section 434(d)(1) of the District of Columbia Self-Government and Governmental Reorganization Act is amended by striking out "thirty days" each place it appears and inserting in lieu thereof "sixty days".

SEC. 18. EFFECTIVE DATE.

This Act shall take effect on the date of the enactment of this Act.

COMMITTEE AMENDMENTS

The SPEAKER pro tempore. The Clerk will report the first committee amendment.

The Clerk read as follows:

Committee amendment: Page 2, strike out line 3 and insert in lieu thereof "Judicial Efficiency and Improvement Act of 1985'."

Mr. DELLUMS. Mr. Speaker, I ask unanimous consent that the committee amendments be considered en bloc, considered as read, and printed in the RECORD.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from California?

There was no objection.

The remaining committee amendments are as follows:

Committee amendments: Page 7, line 6, strike out "subsection (b)(2)" and insert in lieu thereof "subsection (b)(1)".

Page 7, line 7, strike out "Chief Judge" and insert in lieu thereof "chief judge".

Page 8, line 5, strike out "Section 303" and insert in lieu thereof "Section 301".

Page 8, line 16, insert "(a) IN GENERAL.—" before "Subchapter II".

Page 10, after line 11, insert the following new subsection:

(b) TECHNICAL AMENDMENT.—The table of sections for such subchapter is amended by adding at the end thereof the following new item:

"11-723. Certification of questions of law."

Page 12, line 22, strike out "second" and insert in lieu thereof "third".

Page 13, line 5, strike out "third" and insert in lieu thereof "fourth".

Page 13, line 14, strike out "'Commission'" and insert in lieu thereof "'Commission'".

Page 5, strike out line 4 and all that follows through line 8 on page 5 and insert in lieu thereof the following:

"(D)(1) Subject to paragraph (2), the findings of the hearing commissioner shall constitute a final order of the Superior Court.

"(2) A rehearing or review of the hearing commissioner's findings in a case under subparagraphs (A) and (B) may be made by a judge of the Family Division sua sponte and shall be made upon a motion of one of the parties, which motion shall be filed within ten days after the judgment. An appeal to the District of Columbia Court of Appeals may be made only after a hearing is held in the Superior Court."

Mr. DELLUMS. Mr. Speaker, I simply wish to explain briefly that the committee amendments presented to the body are perfecting amendments, and I ask that they be approved.

The SPEAKER pro tempore. The question is on the committee amendments.

The committee amendments were agreed to.

Mr. DELLUMS. Mr. Speaker, I move to strike the last word.

Mr. Speaker, this bill makes certain changes in the local courts in Washington, DC, suggested by local practitioners, officials, and the courts, and makes permanent authority for hearing commissioners, authority which Congress has granted from year to year in appropriation bills.

Hearings were held before our Subcommittee on the Judiciary and Education chaired by the gentleman from California [Mr. DYMALLY], with the ranking minority member being the distinguished gentleman from Virginia [Mr. BLILEY], each of whom will give a further explanation of the bill at the appropriate time.

With the brief introductory set of remarks, Mr. Speaker, I yield back the balance of my time.

Mr. DYMALLY. Mr. Speaker, I move to strike the last word.

Mr. Speaker, since the 98th Congress, the Subcommittee on Judiciary and Education has focused its attention on improving the administration of Justice in the District of Columbia, and at the same time transferring to the District authority over its agencies, consistent with the legislative intent underlying the District of Columbia Court Reform and Criminal Procedure Act of 1970 and the District of Columbia Self-Government Act and Government Reorganization Act of 1973, as amended.

This legislation emanates from these significant legislative developments. It reflects both self-government considerations and the improvement and efficiency of the local judicial system. The bill itself evolves from recommendations of the District of Columbia Court Study Committee and the District of Columbia courts.

A brief history of its development are in order. In 1978, the District of Columbia Bar Association formed the District of Columbia Court Study Committee. This committee (commonly known as the Horsky Committee) was charged with evaluating the District of Columbia Court Reform and Criminal Procedure Act of 1970 and making appropriate recommendations for improving the judicial system. Over a 4-year period, the court study committee conducted its mission. Certain provisions in this bill represent the committee's work product.

In sum, H.R. 3578 would create permanent authority for District of Columbia hearing commissioners, eliminate duplicate judicial financial reporting, provide authority for the District of Columbia Court of Appeals to answer certain undecided questions of District of Columbia law pending in other courts and amend a panoply of provisions involving judicial nomination, reappointment, and tenure processes.

It would also require the U.S. attorney to publish an annual report regarding its District of Columbia criminal justice activity. Further, it would modify the appointment panel for the Board of Trustees of the Public Defender Service.

These noncontroversial provisions would further improve local judicial nomination and tenure processes and at the same time move the local government one step further toward self-government. Most important, it is estimated that the bill would save the local government over $600,000 a year at no cost to the Federal Government.

Mr. BLILEY. Mr. Speaker, I move to strike the last word.

Mr. Speaker, I rise to support the passage of H.R. 3578. This bill makes a number of minor, but important and needed corrections in the procedures and efficiency of the District of Columbia courts.

Mr. DYMALLY, the chairman of the Judiciary and Education Subcommittee, was diligent in his efforts to craft a piece of valuable legislation that all parties could agree to. I am pleased to be able to lend my support to his efforts and to thank him for his bipartisan spirit.

Mr. Speaker, the minority members of the District of Columbia committee support passage of H.R. 3578.

□ 1235

Mr. DELLUMS. Mr. Speaker, I move the previous question on the bill.

The previous question was ordered.

The bill was ordered to be engrossed and read a third time, and was read the third time, and passed and a motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. DELLUMS. Mr. Speaker, I ask unanimous consent that all members may have 5 legislative days in which to revise and extend their remarks on the bill just passed.

The SPEAKER pro tempore. Is there objecton to the request of the gentleman from California?

There was no objection.

H.R. 2965

(Mr. SMITH of Iowa asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. SMITH of Iowa. Mr. Speaker, I would like to make the Members of the House aware of an unfortunate set of circumstances in the other body concerning H.R. 2965, the fiscal year 1986 appropriations bill for the Departments of Commerce, Justice and State, the Judiciary and Related Agencies. The House passed this bill July 17, leaving the other body ample time to act and for the two Houses to go to conference and send the bill to the President prior to the beginning of the fiscal year. The bill was reported out of the Senate committee on October 4, 4 days into the new fiscal year. The bill is now bogged down on an extraneous issue that has nothing to do with the provision of funds for law enforcement, drug enforcement, dealing with terrorist activities, and numerous important programs in the Commerce and State Departments and other agencies. I understand that the bill may not come up again in the other body unless this matter can be resolved.

The bill the Senate committee reported not only provides for programs in the House bill, but also other items and projects added that Members of the Senate are interested in. In addition, I also understand that the bill is undergoing a number of floor amendments, as many as 37, that should be resolved in a conference on this bill.

If this bill does not go to conference because of this totally extraneous item, these matters will have to be worked out with all the others in the context of the continuing resolution.

If this bill is conferenced in the continuing resolution, I can assure the Members of the other body that it will be very difficult for the individual projects put into such legislation by amendment or referenced in the Senate-reported bill to receive a favorable consideration that they might otherwise receive if we had an opportunity to go to conference on the individual bill. That is not a threat. It is just a plain fact that Members of the House and Members of the other body, the departments and agencies involved and the American taxpayers are all much better served if this bill is passed separately in conference, instead of being incorporated into a continuing resolution.

GREAT FINISH OF 1985 WORLD SERIES

(Mrs. MEYERS of Kansas asked and was given permission to address the House for 1 minute.)

Mrs. MEYERS of Kansas. Mr. Speaker on behalf of the Kansas City Royals, and the people of the Third District of Kansas, I am here to gloat—respectfully, of course.

The headline in this morning's Kansas City Times says it all—You Gotta Love It!

Now, you are looking at George Brett's Congresswoman. And also I have some other Royal constituents who are now household names. Buddy Biancalana, Bret Saberhagen, Dane Iorg, Danny Jackson, Bud Black, Charlie Liebrandt, Darrell Motley, Jim Sundberg, and Dan Quisenberry.

After losing the first two games at home, and down 3 to 1 in the series, the Royals became the first team in history to bounce back from such a deficit and win the World Series. Obviously, the Kansas City Royals can teach us a thing or two about overcoming deficits.

It's a great day for Kansas City, for the State of Missouri, and for many of us in Kansas and for the entire Nation as the curtain finally comes down on what has been a truly great finish of the 1985 World Series.

FAIR LABOR STANDARDS AMENDMENTS OF 1985

Mr. MURPHY. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3530) to amend the Fair Labor Standards Act of 1938 to authorize the provision of compensatory time in lieu of overtime compensation for employees of States, political subdivisions of States, and interstate governmental agencies, to clarify the application of the act to volunteers, and for other purposes, as amended.

The Clerk read as follows:

H.R. 3530

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE; REFERENCE TO ACT

SECTION 1. (a) SHORT TITLE.—This Act may be cited as the "Fair Labor Standards Amendments of 1985".

(b) REFERENCE TO ACT.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be a reference to a section or other provision of the Fair Labor Standards Act of 1938.

COMPENSATORY TIME

SEC. 2. (a) COMPENSATORY TIME.—Section 7 (29 U.S.C. 207) is amended by adding at the end the following:

"(o)(1) Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

"(2) A public agency may provide compensatory time under paragraph (1) only—

"(A) pursuant to—

"(i) applicable provisions of a collective bargaining agreement between the public agency and representatives of such employees; or

"(ii) in the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

"(B) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3).

In the case of employees described in clause (A)(ii) hired prior to April 15, 1986 the regular practice in effect on April 15, 1986, with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or understanding under such clause (A)(ii). Except as provided in the previous sentence, the provision of compensatory time off to such employees for hours worked after April 14, 1986, shall be in accordance with this subsection.

"(3)(A) If the work of an employee for which compensatory time may be provided included work in a public safety activity, an emergency response activity, or a seasonal activity, the employee engaged in such work may accrue not more than 480 hours of compensatory time for hours worked after April 15, 1986. If such work was any other work, the employee engaged in such work may accrue not more than 180 hours of compensatory time for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 or 180 hours, as the case may be, of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

"(B) If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate earned by the employee at the time the employee receives such payment.

"(4) An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at a rate not less than the average regular rate received by such employee during the last 3 years of the employee's employment.

"(5) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency—

"(A) who has accrued compensatory time off authorized to be provided under paragraph (1), and

"(B) who has requested the use of such compensatory time, shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

"(6) For purposes of this subsection—

"(A) the term 'overtime compensation' means the compensation required by subsection (a), and

"(B) the terms 'compensatory time' and 'compensatory time off' means hours during which an employee is not working, which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.".

(b) EXISTING COLLECTIVE BARGAINING AGREEMENTS.—A collective bargaining agreement which is in effect on April 15, 1986, and which permits compensatory time off in lieu of overtime compensation shall remain in effect until its expiration date unless otherwise modified, except that compensatory time shall be provided after April 14, 1986, in accordance with section 7(o) of the Fair Labor Standards Act of 1938 (as added by subsection (a)).

(c) LIABILITY AND DEFERRED PAYMENT.—(1) No State, political subdivision of a State, or interstate governmental agency shall be liable under section 16 of the Fair Labor Standards Act of 1938 for a violation of section 7 or 11(c) (as it relates to section 7) of such Act occurring before April 15, 1986, with respect to any employee of the State, political subdivision, or agency who would not have been covered by such Act under the Secretary of Labor's special enforcement policy on January 1, 1985, and published in sections 775.2 and 775.4 of title 29 of the Code of Federal Regulations.

(2) A State, political subdivision of a State, or interstate governmental agency may defer until August 1, 1986, the payment of monetary overtime compensation under section 7 of the Fair Labor Standards Act of 1938 for hours worked after April 14, 1986.

SPECIAL DETAILS, OCCASIONAL OR SPORADIC EMPLOYMENT, AND SUBSTITUTION

SEC. 3. (a) SPECIAL DETAIL WORK FOR FIRE PROTECTION AND LAW ENFORCEMENT EMPLOYEES.—Section 7 (29 U.S.C. 207) is amended by adding after subsection (o) (added by section 2) the following:

"(p)(1) If an individual who is employed by a State, political subdivision of a State, or an interstate governmental agency in fire protection or law enforcement activities (including activities of security personnel in correctional institutions) and who, solely at such individual's option, agrees to be employed on a special detail by a separate or independent employer in fire protection, law enforcement, or related activities, the hours such individual was employed by such separate and independent employer shall be excluded by the public agency employing such individual in the calculation of the hours for which the employee is entitled to overtime compensation under this section if the public agency—

"(A) requires that its employees engaged in fire protection, law enforcement, or security activities be hired by a separate and independent employer to perform the special detail,

"(B) facilitates the employment of such employees by a separate and independent employer, or

"(C) otherwise affects the condition of employment of such employees by a separate and independent employer.".

(b) OCCASIONAL OR SPORADIC EMPLOYMENT.—Section 7(p) (20 U.S.C. 207), as added by subsection (a), is amended by adding at the end the following:

"(2) If an employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency undertakes, on an occasional or sporadic basis and solely at the employee's option, part-time employment for the public agency which is in a different capacity from any capacity in which the employee is regularly employed with the public agency, the hours such employee was employed in performing the different employment shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.".

(c) SUBSTITUTION.—(1) Section 7(p) (29 U.S.C. 207), as amended by subsection (b), is amended by adding at the end of following:

"(3) If an individual who—

"(A) is employed by a public agency which is a State, political subdivision of a State, or an interstate governmental agency, and

"(B) is employed in fire protection or law enforcement activities (including activities of security personnel in correctional institutions), agrees, with the approval of the public agency and solely at the option of such individual, to substitute during scheduled work hours for another individual who is employed by such agency in such activities, the hours such employee worked as a substitute shall be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.".

(2) Section 11(c) (29 U.S.C. 211(c)) is amended by adding at the end the following: "The employer of an employee who performs substitute work described in section 7(p)(3) may not be required under this subsection to keep a record of the hours of the substitute work.".

VOLUNTEERS

SEC. 4. (a) DEFINITION.—Section 3(e) (29 U.S.C. 203(e)) is amended—

(1) by striking out "paragraphs (2) and (3)" in paragraph (1) and inserting in lieu thereof "paragraphs (2), (3), and (4)", and

(2) by adding at the end the following:

"(4)(A) The term 'employee' does not include any individual who volunteers to perform services for a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, if—

"(i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered; and

"(ii) such services are not the same type of services which the individual is employed to perform for such public agency.

"(B) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency may volunteer to perform services for any other State, political subdivision, or interstate governmental agency, including a State, political subdivision or agency with which the employing State, political subdivision, or agency has a mutual aid agreement.".

(b) REGULATIONS.—Not later than March 15, 1986, the Secretary of Labor shall issue regulations to carry out paragraph (4) of section 3(e) (as amended by subsection (a) of this section).

(c) CURRENT PRACTICE.—If, before April 15, 1986, the practice of a public agency was to treat certain individuals as volunteers, such individuals shall until April 15, 1986, be considered, for purposes of the Fair Labor Standards Act of 1938, as volunteers and not as employees. No public agency which is a State, or political subdivision of a State, or an interstate governmental agency shall be liable for a violation of section 6 occurring before April 15, 1986, with respect to services deemed by that agency to have been performed for it by an individual on a voluntary basis.

STATE AND LOCAL LEGISLATIVE EMPLOYEES

SEC. 5. Clause (ii) of section 3(e)(2)(C) (29 U.S.C. 203(e)(2)(C)) is amended—

(1) by striking out "or" at the end of subclause (III),

(2) by striking out "who" in subclause (IV),

(3) by striking out the period at the end of subclause (IV) and inserting in lieu thereof ", or", and

(4) by adding after subclause (IV) the following:

"(V) is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.".

EFFECTIVE DATE

SEC. 6. The amendment made by this Act shall take effect April 15, 1986. The Secretary of labor shall before such date promulgate such regulations as may be required to implement such amendments.

EFFECT OF AMENDMENTS

SEC. 7. The amendments made by this Act shall not affect whether a public agency which is a State, political subdivision of a State, or an interstate governmental agency is liable under section 16 of the Fair Labor Standards Act of 1938 for a violation of section 6, 7, or 11 of such Act occurring before April 15, 1986, with respect to any employee of such public agency who would have been covered by such Act under the Secretary of Labor's special enforcement policy on January 1, 1985, and published in section 775.3 of title 29 of the Code of Federal Regulations.

DISCRIMINATION

SEC. 8. A public agency which is a State, political subdivision of a State, or an interstate governmental agency and which discriminates or has discriminated against an employee with respect to the employee's wages or other terms or conditions of employment because on or after February 19, 1985, the employee asserted coverage under section 7 of the Fair Labor Standards Act of 1938 shall be held to have violated section 15(a)(3) of such Act.

The SPEAKER pro tempore. Is a second demanded?

Mr. JEFFORDS. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Pennsylvania [Mr. MURPHY] will be recognized for 20 minutes and the gentleman from Vermont [Mr. JEFFORDS] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Pennsylvania [Mr. MURPHY].

Mr. MURPHY. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, since the Supreme Court's decision earlier this year in Garcia versus San Antonio Metropolitan Transit Authority, which held that the Congress had the authority in a 1974 act to extend the Fair Labor Standards Act to State and local government employees, there has been a great deal of concern, uncertainty, and confusion on this part of State and local government officials and their

employees as to how this act would affect their ability to provide essential services to the public.

Initial concerns focused mainly on the possible budgetary impact of compliance with the act and the potential loss of flexibility necessary to effectively deal with the various needs of the public. The Committee on Education and Labor, as well as many Members of the House, shared this concern, and our subcommittee sought to establish a clear understanding of the magnitude of the costs involved. We sought to ensure that those State and local officials understood the substance of the act and how much flexibility it allows in administering local government activities.

I would like to thank all of the members of the Committee on Education and Labor, and of the Subcommittee on Labor Standards, which I chair, for their involvement in reaching this compromise.

I want to thank the members of organized labor representing the municipal employees. I would like to thank the representatives of all the local government associations and the State legislative bodies for working and toiling so many hours among themselves, together with Members of Congress, to frame this compromise. I would also like to thank the many Members of this House who took such an active interest in this issue and greatly assisted the committee through the legislative suggestions that they made. This legislation is the result of all of the bills introduced in the wake of the Garcia decision, and I believe is the consensus of what those bills sought to achieve.

The members of the Subcommittee on Labor Standards became convinced that although the costs of compliance were unlikely to be as high as some of the early estimates, some increased costs were sure to occur. More importantly, the unique responsibilities of public agencies required special consideration. The measure before this House reflects that belief, and correctly addresses the concerns of the local officials while also ensuring that their public employees continue to enjoy the basic protections of the act.

In considering this issue, it was essential that the particular needs and circumstances of the States and their political subdivisions be carefully weighed and fairly accommodated. As the Supreme Court stated in Garcia, "the States occupy a special position in our constitutional system." The committee recognized that State and local governments, unlike other employers, have special responsibilities in promoting the public good. In reporting this bill, the committee has sought to discharge that responsibility and to further the principles of cooperative federalism.

This measure will permit State and local governments to continue to use what we refer to as comp-time as payment for overtime hours worked, but provides that comp-time must be awarded at time and one-half, in keeping with the act's requirements for cash overtime. This measure recognizes the joint employment and occasional employment situations which currently exist in many municipalities to the satisfaction of both the public agency and the employees, and permits them to continue within the framework of the act. Also, this measure clarifies the definition of volunteers under the act, and I believe greatly eliminates the concerns of many parties.

In addition, this measure will eliminate the liability which many municipalities have incurred since the Court's decision. The subcommittee recognized that the sudden change in employment requirements placed the municipalities in a difficult economic situation. The phase-in provision is consistent with previous congressional action that has expanded the act's coverage since 1938. Therefore, this measure would eliminate liability for violations of sections 7 and 11 of the act prior to April 15, 1986, next April.

I believe that this measure correctly responds to the concerns of the Members of the House, and the thousands of State and local government officials nationwide and their employees. I urge the Members of this House to support this measure ensuring that the protections of the act can be extended to municipal workers without unduly threatening municipal services.

Mr. JEFFORDS. Mr. Speaker, I yield myself such time as I may consume.

□ 1250

Mr. JEFFORDS. Mr. Speaker, the bill before us is the product of cooperation and compromise; compromise on the part of the public employer and employee interests, and cooperation on the part of many Members who hold strong and sincere beliefs on how, and even whether, we should respond to the Supreme Court's Garcia decision. I hope this spirit of cooperation and compromise continues.

The provisions of this bill bring much needed flexibility to the application of the Fair Labor Standards Act to State and local employees and employers. In my State, as in many others, employers and employees have found many practices, notably the use of compensatory time, to be mutually beneficial. In fact, the Vermont State Employees Association elicited tremendous support for a petition seeking the continued availability of compensatory time in lieu of overtime wages.

At the same time, towns and taxpayers alike have been concerned that the Garcia decision will imposed substantial, unexpected labor costs on them. The provisions of this bill ensure that governments will be able both to gauge their overtime costs and budget for them. Fortunately, the April 1986 effective date of the bill will give Vermont's towns and communities across the State the opportunity to debate and decide these issues during their town meetings in March.

While large cities or States with extensive personnel departments may find it easy to administer the act—and I'm not sure even they will—the towns and cities in my State have had and continue to have difficulty in complying with its provisions. I hope this bill will make that task somewhat easier.

Under the legislation before us, employers and employees would be able to agree to use compensatory time, either in lieu of or in conjunction with the overtime pay now required by the Fair Labor Standards. Act. This agreement could be as formal as a collective bargaining agreement, or as informal as a past, unwritten practice of providing compensatory time. Where no mutual agreement exists, an employer could decide to offer compensatory time and would be required to notify employees prior to their performance of overtime work.

Accrued compensatory time would be limited, largely as a protection for employees. Unlike many current arrangements, compensatory time would not have to be cashed out on an annual or biannual basis, but would be in an ongoing bank. This bank would be subject to caps, of 480 and 180 hours, depending on the type of employee. Unlike H.R. 3530, the bill passed by the other body contains a single 480-hour cap. Overtime in excess of the caps would be permitted, but would have to be paid in cash rather than compensatory time. Within the limits set by the bill, employers and employees would be free to design or maintain their own compensatory time systems.

In this bill we have tried to accommodate the needs of local government, its citizens and its employees. We recognize and sanction voluntarism, which is obviously much more prevalent and vital to the public sector than the private. And we recognize special detail, occasional, and substitute employment—all common practices in the public sector.

At the same time, we have been careful to maintain the employee protections that are a fundamental part of the Fair Labor Standards Act. Compensatory time must be paid at a premium rate. Liability for violations affecting nontraditional employees, who have been covered by the Fair Labor Standards Act since the Supreme Court's National League of Cities against Usery decision, continues. And the status of some workers under that

decision, which is being litigated in our courts, remains unaffected.

The bill prohibits an employer from discriminating against an individual simply because an individual asserted coverage under the Fair Labor Standards Act in the wake of the Garcia decision. For example, if an employee or several employees stepped forward and asked for overtime pay, and their employer responded by demoting, discharging, or otherwise discriminating against them, and not their colleagues, the aggrieved individuals could seek relief. Although initially troubled by the language of section 8, it was with this understanding that the public employer representatives who were party to the negotiations leading to this legislation agreed to support the language. It was not intended, and must not be construed, as some sort of elliptical hold harmless formula for employees' wage rates.

It is my understanding that several public employers have chosen to reduce their employees' wages across the board in response to the Garcia decision. The reasons for such a choice may be several, but clearly one of them is economic. If a city or State is operating with limited resources and is suddenly faced with new, unexpected overtime costs and requirements, it may reasonably come to the conclusion that it must reduce its regular rate of pay so as to maintain the level of its payroll when overtime costs are added into that payroll. Obviously this is a drastic step. It is one that I would hope no employer would have to undertake. However, I do not believe that anything within this bill precludes this response to the Garcia decision. I would be happy to yield to any Member who has a different view.

Mr. Speaker, let me conclude by saying that this legislation represents Congress at just about its best. The basic rationale for overruling the National League of Cities against Usery decision was the fact that the distinction between traditional and nontraditional is unworkable and that limitations on the Congress' commerce power with respect to State and local governments lay not in the 10th amendment but in the workings of the Federal Government, and particularly the Congress. This latter aspect of the decision was not very comforting to those people who take a dim view of Congress. However, in this instance, at least, we may prove the doubters wrong. We have met a real problem with a real solution, and will do so in a timely fashion. We have listened to a broad range of interests, and have adopted the best suggestions of each.

On a personal note, I am very grateful to the dozens and dozens of State and local employees and officials from Vermont who have taken the time to give me their views on this issue. The same, of course, holds for their representatives, particularly the Vermont League of Cities and Towns, the Vermont State Employees Association, the State Officer of Personnel, and the American Federation of State, County and Municipal Employees.

I also want to thank Secretary of Labor Bill Brock who, with his staff, has greatly assisted us. Finally, I want to thank my colleagues. Although this bill differs from the dozen or so bills that were introduced in the House on ths subject, it owes its inception in large part to the efforts of those Members who have been actively working to solve this issue for the past 8 months. My colleagues on the Labor Standards Subcommittee, Mr. PETRI and Mr. BARTLETT, have likewise been vital to this process. Subcommittee Chairman MURPHY has shown solid leadership. And Chairman HAWKINS has shown solid leadership. And Chairman HAWKINS has been typically fair and thoughtful.

Mr. Speaker, I urge my colleagues to give this bill their resounding support.

Mr. MURPHY. Mr. Speaker, I yield 2 minutes to the chairman of the full Committee on Education and Labor, the gentleman from California [Mr. HAWKINS], who was extremely helpful in guiding the first major bill through my subcommittee since I became one of his subcommittee chairmen.

Mr. HAWKINS. I thank the gentleman for yielding this time to me.

Mr. Speaker, today we bring to the House a bill which will remove a potential financial burden from States and localities, yet preserve labor standards protections for the employees of those entities. The bill, H.R. 3530, has the bipartisan support of the members of the Committee on Education and Labor, having been ordered reported by a unanimous voice vote. The legislation amends the Fair Labor Standards Act [FLSA] by modifying the overtime provisions of the act to give public employers, in agreement with their employees, a choice of either granting compensatory time or paying monetary compensation for overtime worked. The bill provides flexibility in other areas such as joint employment and the use of volunteer services. In addition, the bill removes potential retroactive liability for the payment of overtime compensation as required under existing provisions of the FLSA. This is most important to the fiscal concerns of States and localities.

H.R. 3530 is nearly identical to a measure approved in the other body by voice vote on Thursday, October 24. The close similarity of the bills is due to the bipartisan cooperation of Members in both Houses of the Congress. The Members who were involved in the legislative process, particularly those in leadership roles, deserve the thanks and appreciation of all the parties who will be affected by these amendments. I want to congratulate and commend the chairman of our Subcommittee on Labor Standards, Mr. MURPHY, for his leadership in proceeding expeditiously with this legislation. I want to express special appreciation to the ranking subcommittee member, Mr. PETRI, and the ranking member of the full committee, Mr. JEFFORDS, who, throughout consideration of this legislation, have been most helpful and supportive. Also, mention should be made of the assistance Mr. BARTLETT rendered in the negotiations which produced this excellent compromise.

The bill also has been endorsed by the National Association of Counties, the National Conference of State Legislators, the National League of Cities, and the U.S. Conference of Mayors. These associations have said that the bill "maintains the principles of the Fair Labor Standards Act and at the same time recognizes the special circumstances faced by public employers and public employees." The AFL-CIO supports the bill, saying that "it preserves the integrity of the Fair Labor Standards Act which is so vital to the interests of employees while addressing the concerns of public employers."

H.R. 3530 is a direct legislative response to the issues raised in the Supreme Court decision in Garcia versus San Antonio Metropolitan Transit Authority. Had the decision been implemented, State and local governments would have had to make drastic changes in employment policies and practices, as well as the utilization of volunteer services. In addition, many States and localities would have had to assume a retroactive financial liability, because they engaged in an employment practice—generally preferred by employees in certain highly stressful jobs—of granting compensatory time in lieu of monetary compensation for overtime hours worked. This certainly would have been the case in the Los Angeles area where, as my colleagues know, we have a somewhat unique situation of recurring seasonal disasters, such as fires, which take their toll on our emergency response personnel, not to mention the pocketbooks of our taxpayers.

Shortly after the Garcia decision, I received numerous calls and communications from civic leaders in Los Angeles seeking relief from the potential burden of FLSA overtime coverage, and asking for a legislative remedy which would recognize their special problems and customary employment practices.

I am pleased that today I can recommend to the House a measure which accommodates not only the particular circumstances in my home area, but the operations of States and localities throughout the Nation.

The bill accommodates States and localities by allowing the continuation of a widespread practice of granting compensatory time off for overtime hours worked, yet protects the preferences of employees regarding the utilization of the compensatory time. After the effective date of the amendments, employees may receive, in lieu of overtime compensation, compensatory time at the rate of not less than 1.5 hours of compensatory time for each hour of overtime worked. The offering of compensatory time must be governed by a collective bargaining agreement or some other agreement or understanding between the employer and the employees, or the employees' selected representative, before the performance of the overtime work, or with prior notice to the employees. No more than 480 hours of compensatory time may be accrued by employees engaged in public safety, emergency response, or seasonal work. For all other employees, the limit is 180 hours. An employee must be permitted to use requested compensatory time within a reasonable time after making a request unless use of the compensatory time would unduly disrupt the operations of the employer.

The bill also accommodates several customary employment practices which have proved beneficial to both employers and employees, and relieves employers from the overtime penalty that would otherwise be applicable. Among these are special detail work and other occasional or sporadic work by public employees.

Another matter which governmental entities wanted clarified and which the bill accommodates, is the widespread use of volunteers. The bill expands and codifies existing regulations by providing that even if an individual receives reasonable benefits or a nominal fee, or a combination of both, for services performed, the individual will still be considered a volunteer. Also, a public employee may provide volunteer services for a different public employer, or for the employee's own employing agency but in a different job capacity.

Finally, the bill removes a liability that could have been imposed pursuant to the Garcia decision because employers relied on a previous Supreme Court ruling—National League of Cities versus Usery—which exempted them from FLSA coverage. States and localities engaged in traditional governmental functions such as schools, hospitals, fire prevention, police protection, sanitation, public health, parks and recreation, libraries, museums, and so forth, are relieved of overtime liability until April 15, 1986. This gives those entities 5½ months to adjust to the requirements of the FLSA, as modified by this legislation, and to make any necessary management decisions as to future personnel allocations, particularly as they relate to police and fire personnel. Furthermore, actual payment of monetary overtime may be delayed until August 1, 1986, in recognition of the fact that the fiscal years of State and local governments are not uniform. Also, in recognition of pending litigation, the bill does not affect whether employees of State and local governments who are engaged in nontraditional functions, as defined by the Secretary of Labor, are covered prior to April 15, 1986.

Mr. Speaker, overall, this legislation represents a reasonable resolution to some difficult and complex employment problems that were raised by the Garcia decision. It will give States and localities the flexibility they need to operate, and provide public employees with meaningful FLSA protection. It also provides flexibility in other areas such as volunteer services and the ancillary activities and work of public employees. More importantly, it will prevent any undue hardships being placed upon State and local governments. Yet it will maintain wage and hour standards for the employees who perform the necessary, and often life-threatening, services for those jurisdictions. I wholeheartedly recommend this legislation to the House, and urge its unanimous adoption.

Mr. JEFFORDS. Mr. Speaker, I yield 8 minutes to the gentleman from Texas [Mr. BARTLETT].

Mr. ROTH. Mr. Speaker, will the gentleman yield?

Mr. BARTLETT. I yield to the gentleman from Wisconsin.

Mr. ROTH. Mr. Speaker, I want to compliment all the Members who have worked so hard on this particular piece of legislation on both sides of the aisle.

Ever since February 19 when the Supreme Court ruled in Garcia versus San Antonio Metropolitan Transit Authority, we have known action must be taken by Congress. It is our duty to act responsibly and quickly to ensure continued flexibility in State and local employment practices. I strongly support H.R. 3530, which would rectify the current situation.

This legislation is a fair compromise that recognizes the unique role of State and local governments in providing services and the need for flexibility in compensating employees. Congress has the opportunity today to take a meaningful stance, not just a symbolic gesture, to stop the encroachment of Federal regulations where they serve no useful purpose.

Without this legislation, the Department of Labor will shortly start enforcing compliance to the Supreme Court ruling. I have heard from a number of towns and cities throughout my district in Northeast Wisconsin. I strongly sympathize with their plight. As they try to balance their own budgets, the Federal Government, which can't even balance its budget, steps in and orders them to abrogate standing contracts in favor of more costly alternatives.

If I might quote from a recent letter I received from the village president of Black Creek, WI:

> It would greatly increase costs for Wisconsin's already tax-burdened urban communities. In Black Creek alone, population 1,097, this provision could amount to well over a $5,000-a-year increase in costs or a severe cutback in services.

This has become a pressing fiscal issue for subunits of government. State and local entities across the United States, big and small alike, will face an exorbitant increase in costs. Services will have to be cut. Taxpayers will suffer unnecessarily.

I represent a rural district and I am particularly concerned that the "redefinition" of volunteers will make them too costly to use. We would be forced to neglect a vital resource at a time when we need it most.

It comes down to Federal Government interference in a State and local matter. State and local governments long ago came up with a unique method to suit their peculiar needs and to fill the services required of them. We should allow them to continue this role unhindered. This legislation represents a commitment to federalism because it returns to State and local governments responsibilities which are rightfully theirs.

Congress must stand tall on this matter. I commend the members of the Education and Labor Committee for putting this bill on a fast track. I urge my colleagues to follow the bipartisan lead of the committee and support H.R. 3530.

Mr. BARTLETT. I thank the gentleman for his kind words, and perhaps we will start a new trend with this legislation in Congress for the rest of the session.

Mr. Speaker, I rise in strong support of H.R. 3530. Let me begin by commending the extraordinary efforts that have been made in a bipartisan way on this bill by members of the Committee on Education and Labor and, indeed, by a large number of Members of Congress on both sides of the aisle. In particular, the chairman of the Committee on Education and Labor, the gentleman from California [Mr. HAWKINS] has been extraordinary in his fairness and his evenhandedness in his efforts to bring this bill to the floor, and the subcommittee chairman, the gentleman from Pennsylvania [Mr. MURPHY], for whom I have a great deal of respect, who was instrumental in the success of the passage of this legislation, together with the ranking Republican on the Committee on Education and Labor, the gentleman from Vermont [Mr. JEFFORDS], and the ranking Republican on

the subcommittee, the gentleman from Wisconsin [Mr. PETRI].

It has been through that good will we have arrived at a reasonable and equitable solution today that is equitable for all persons involved. There was potential on this issue all along for resulting in a great deal of disruption and a lack of agreement, and there was the potential always that Congress would choose to do nothing, and choosing to do nothing would have been very disruptive to the lives of public employees and taxpayers around this country.

It is to the credit of the gentleman on both sides of the aisle that Congress has chosen to take reasonable steps forward.

I also would take a minute to commend the various people who have been involved in this legislation from around the country and from Texas: The Texas Municipal League, the National League of Cities, various employee groups, both union and nonunion, around this country who have contributed to the action we take today.

It seems to me that today's bill in H.R. 3530 provides for the rights of two groups of people. No. 1, it provides for a restoration of the rights of public employees who have been accustomed to traditional rights as public employees that would have been denied to them by Garcia, and it also is combined with the rights of taxpayers to municipal services and to being able to set their own priorities.

Public employees have had the traditional rights of compensatory time, volunteer time, and trading shifts. I have heard, as every Member has, I think, from public employees from around this country, from police officers and firefighters, who would say, "We very much want to retain that right to be compensated with compensatory time off later in exchange for overtime work that we do today." I heard from State workers in a mental health hospital who have gotten accustomed to and who want to continue to provide volunteer work on the weekends for the benefit of their clients and the patients at that State hospital, and this bill provides for those rights to continue.

We also, I think, are all familiar with the rights of taxpayers. Had this bill not been passed, the taxpayers for State and municipal governments around this country would have been socked with bigger bills, with lowered services, and no one would have won. It is estimated that some $2 to $3 billion in budget adjustments would have been made total around this country. In the city of Dallas, alone, the tab would have been $1.6 million in additional costs, with no additional services; in fact, with reduced services. Some cities were required to institute layoffs and others are considering similar action.

Mr. Speaker, the city of Fort Worth estimated that their cost would be $980,000, and in Garland, TX, $200,000 to $400,000, in Irving, $746,000, in Amarillo, $790,000, and that is after a reduction of personnel hours.

So this bill provides for the rights both of public employees and of taxpayers who pay the tab.

Mr. Speaker, it might be helpful just to detail a few of the major provisions of this bill. First, it provides that compensatory in lieu of overtime wages for State and local employees would be permitted under the FLSA. That would be authorized either by collective bargaining agreement or by any sort of memorandum of understanding, including simply an employee notification at the time of hiring. It is provided at the rate of 1½ hours for each hour worked.

□ 1300

It provides for an effective date which would allow employers time to develop adequate procedures and realistic budgets so the liability would not begin until April 15, 1986.

The bill would specify that a public employer may not discriminate against an employee who has asserted the right to coverage under the Fair Labor Standards Act, but the bill does not address at all those actions taken to comply with Garcia which do not relate to discrimination, and I think that is an important point.

The bill provides for exemptions from overtime provisions under certain precise details for volunteers, whether it is within the same agency or in a different agency so long as the service is not the same as the regular work performed in their regular job.

It provides that law enforcement personnel and firefighters who voluntarily agree to special detail assignments, or who wish to trade shifts would be permitted to do that.

It provides that public employees who voluntarily agree to work in a different capacity from their regular jobs be permitted to do that.

This in so many ways adds to the rights of public employees.

Mr. Speaker, in conclusion, I would relate a story. There was a tragic airline accident in the city of Dallas at DFW Airport this summer right in the middle of the Garcia controversy in Dallas County. There were over 100 fatalities involved. The sheriff of Dallas County tells me he went out to the airline tragedy and found his deputies, who had at that point voluntarily arrived on the scene to help take care of some 34 seriously injured personnel, and to help with that tragedy. And he had the unfortunate job of telling his deputies, face to face, one to one, that they could not continue to help the people that needed help in this airline tragedy.

His deputies looked at the sheriff and said: "Sheriff, if the Garcia decision, whatever that is, if the Federal Government says that as a deputy sheriff, and as a human being, I cannot come to this airport and help people who need my help, then you can take my badge and my resignation right now." As one deputy put it, "People need help, and I am here to help them."

I took that mandate to heart, as I think many Members of Congress did. Public employees are in public service because they want to help people.

Congress, by the enactment of H.R. 3530, will allow that service to continue to happen.

I thank the gentleman for yielding.

Mr. MURPHY. Mr. Speaker, during the days of pressure in September and October when so many Congressmen from around the country were being pressured on this issue, we reached out to many Members of Congress, and the Appropriations Committee and its chairman were so helpful, we reached out to many other Members of Congress to ask us to preserve the jurisdiction of the Education and Labor Committee. This was our problem, we were wrestling with it.

We did come up with a solution, and I want to say that one of the gentlemen we reached out to, and he assisted us in his efforts with other members of the committee so that our committee could complete its work, was the gentleman from Oklahoma [Mr. JONES].

Mr. Speaker, I yield 3 minutes to the gentleman from Oklahoma [Mr. JONES].

Mr. JONES of Oklahoma. Mr. Speaker, action today on H.R. 3530 marks an historic achievement by State and local governments, labor organizations, other non-Federal public agencies, and Congress.

The very fact that we have a bill before us today defies the wisdom of pundits who just a month ago saw insurmountable rifts between public agencies and their employees, between ideologues on the two extremes of the political spectrum, between the rights of the American taxpayer and the rights of the public employee.

Through the determined leadership of employee organizations and the State and local government associations, and through the laudable flexibility exhibited by Labor Secretary Bill Brock, who worked very closely with the States to reach today's result, the apparently insurmountable obstacles were overcome.

Finally, I want to thank the chairman of the subcommittee, the gentleman from Pennsylvania [Mr. MURPHY] for all the assistance he afforded me

after I drafted the Oklahoma delegation's Garcia bill.

We introduced the bill on October 2, and within a week the chairman's staff had worked with the principal participants to come up with this approach. Because of his leadership, the anticipated congressional fight was resolved through patient negotiation. This is particularly important to my State of Oklahoma. Our State's economy is depressed and that has had a depressing effect on commerce all over Oklahoma. The Garcia decision would have been devastating to local government in Oklahoma.

Passage of this legislation provides security for State and local governments and American taxpayers, and fairness for their employees. I urge its adoption.

Mr. JEFFORDS. Mr. Speaker, I yield 2 minutes to the gentlewoman from Nebraska [Mrs. SMITH].

Mrs. SMITH of Nebraska. Mr. Speaker, I am glad that this body has so quickly and effectively addressed the problems caused by the Supreme Court's February 19 Garcia decision by bringing forth H.R. 3530, the Fair Labor Standards Amendments of 1985.

The Court's ruling, which rendered compensatory time off for State and local public employees nearly useless, has been nothing but a disaster in my home State of Nebraska.

Workers have been layed off, county and city budgets have been strained, and my constitutents have been staring at the prospects of higher local taxes or reduced public services.

I introduced legislation, H.R. 3237, to mitigate these harmful effects of Garcia, and many of my colleagues helped to force action in this Chamber by cosponsoring H.R. 3237.

The bill before us now reflects a good, workable, compromise solution to this problem. H.R. 3530 would give employers the option of granting employees time-and-a-half overtime pay or compensatory time off at this same rate. Seasonal, emergency, and public safety employees could bank up to 480 hours of "comp time" before cash overtime pay would be required, all other employees could bank up to 180 hours.

I don't like H.R. 3530 quite as much as a bill passed by the other Chamber last week which lets all workers bank up to 480 hours of "comp time," but all in all H.R. 3530 is a good bill and I urge its support.

Mr. MURPHY. Mr. Speaker, at this time I submit for the RECORD two letters in support of this compromise, one from the American Federation of Labor, which speaks for the labor delegates who met with the municipal bodies, and the other addressed from the various representatives of the League of Cities National Legislative Association.

OCTOBER 17, 1985.

Mr. AUSTIN J. MURPHY,
Chairman, Subcommittee on Labor Standards, Rayburn House Office Building, Washington, DC.

DEAR MR. MURPHY: The National Association of Counties, National Conference of State Legislators, National League of Cities and U.S. Conference of Mayors commend you for the leadership you have shown in resolving the difficulties faced by state and local governments across the nation as a result of the Supreme Court's decision in the Garcia v. the San Antonio Mass Transit Authority case.

The legislation you have introduced, H.R. 3530 provides a solution to the problems created by Garcia which is balanced and equitable for all parties. It maintains the principles of the Fair Labor Standards Act and at the same time recognizes the special circumstances faced by public employers and public employees.

Be assured that you have the strong support of all of our organizations for your bill and that we will provide whatever assistance is needed to achieve its passage in its current form.

Sincerely,

John J. Gunther, executive director, U.S. Conference of Mayors; Matt Coffey, executive director, National Association of Counties; Alan Beals, executive director, National League of Cities; Earl Mackey, executive director, National Conference of State Legislators.

AMERICAN FEDERATION OF LABOR AND CONGRESS OF INDUSTRIAL ORGANIZATIONS,
Washington, DC, October 18, 1985.

DEAR REPRESENTATIVE: On behalf of the AFL-CIO, I urge your support for H.R. 3530, the Fair Labor Standards Amendments of 1985. The bill has received the bipartisan and unanimous support of the Labor Standards Subcommittee of the Committee on Education and Labor, and it is scheduled for markup in the full Committee next Wednesday, October 23. It is our hope that this legislation will now obtain the approval of the full committee, without substantive change. Floor action is anticipated before the end of the month.

In the AFL-CIO's judgment, H.R. 3530 reflects a carefully balanced approach that resolves the questions raised by the U.S. Supreme Court's decision in Garcia v. San Antonio Metropolitan Transit Authority. The bill preserves the integrity of the Fair Labor Standards Act which is so vital to the interests of employees while addressing the concerns of public employers.

The AFL-CIO, therefore, encourages you to cosponsor the bill and to suppport passage of the bill in its present form.

Sincerely,

RAY DENISON,
Director, Department of Legislation.

Mr. Speaker, with regard to the concern stated by the ranking member of the Education and Labor Committee to section 8, I agree that it does pose some bit of a problem. However, we felt that that section was rather necessary in that since the Garcia decision, until now, that we are relieving the municipalities of total responsibility for liability, financial responsibility up until next April, and we felt that if any employee happened to mention to his supervisor or someone else in the course of his daily employment inquiring about his rights, that no retaliatory action should be taken. And we think now with the delay in the effective date there would be plenty of time for municipalities to fully adjust.

I also in closing would like to mention that we appreciate the real efforts on behalf of the gentleman from Vermont [Mr. JEFFORDS], the gentleman from Wisconsin [Mr. PETRI], and the gentleman from Texas [Mr. BARTLETT], and the constant attention they showed to this problem over the past 3 months. And I thank Secretary Brock for meeting with us. The Members will recall that he relieved us of the pressure of the Department of Labor in forcing the particular aspects of the Garcia case until November 1 of this year.

I might say that today we officially asked the Secretary to give us a few more days. We may not be able to get the President to sign this bill by November 1, and if Secretary Brock will grant us another week or so, I am sure that we can send down to his Department a measure that he has certainly been helpful in passing.

With that, Mr. Speaker, I yield back the balance of my time.

Mr. JEFFORDS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, first I would agree with the statements made by the gentleman from Pennsylvania. But I would like to amplify to ensure that we understand each other with respect not to individuals, but as to a general application.

Mr. Speaker, as I mentioned in my statement, some jurisdictions have responded to the Garcia decision by reducing wage rates across the board. I inquired of the Solicitor of Labor as to whether this would constitute discrimination under section 8 of the bill before us.

The Solicitor responded, in pertinent part, and I will include the whole letter in the RECORD:

At some time after the effective date of the amendments effected by H.R. 3530, the employer decides to reduce its total cost of compensation for labor to an amount approximately equal to the amount which would have been expended had the employer never commenced making cash overtime payments. Under the circumstances of this employer's wage structure, it could achieve this objective by reducing the base wage rate of employees, while continuing to comply with the provisions of section 6 (relating to the minimum wage) and the provision of section 7 as that section existed prior to the currently contemplated amendments. The contemplated rate reduction would be made systematically in the wages of all employees, and would constitute a reduction for all purposes of the wage rate previously in effect. You question whether such a reduction would, under the provisions of section 8, be held to constitute a violation of section 15(a)(3) of the act.

Based on the facts set forth above, and in the absence of other significant facts, it is my opinion that the wage reduction described would not, in and of itself, involve the application of Section 8, and would thus not be held to constitute a violation of Section 15(a)(3) of the Act.

U.S. DEPARTMENT OF LABOR,
SOLICITOR OF LABOR,
Washington, DC, October 28, 1985.

Hon. JAMES M. JEFFORDS,
U.S. House of Representatives, Washington, DC.

DEAR CONGRESSMAN JEFFORDS: I am writing in reply to your request for an opinion concerning the possible application of Section 8 of H.R. 3530, by which it is proposed to amend the Fair Labor Standards Act, to a particular factual situation more fully described below.

Section 8, relating to discrimination, provides:

"A public agency which is a State, political subdivision of a State, or an interstate governmental agency and which discriminates or has discriminated against an employee with respect to the employee's wages or other terms or conditions of employment because on or after February 19, 1985, the employee asserted coverage under section 7 of the Fair Labor Standards Act of 1938 shall be held to have violated section 15(a)(3) of such Act."

As I understand the situation which is of concern to you in this connection, the question arises with respect to a public employer to which, prior to February 19, 1985, the provisions of the Fair Labor Standards Act were inapplicable by virtue of the doctrine of *National League of Cities*, and which has, during some portion or all of the period since February 19, 1985, been paying overtime compensation, in cash, to employees, in compliance with the requirements of Section 7 of the Fair Labor Standards Act of 1938. The employer has done so without being bound by the terms of a collective bargaining agreement to do so, and without other legal compulsion beyond the requirements of the Act. At some time after the effective date of the amendments effected by H.R. 3530, the employer decides to reduce its total cost of compensation for labor to an amount approximately equal to the amount which would have been expended had the employer never commenced making cash overtime payments. Under the circumstances of this employer's wage structure, it could achieve this objective by reducing the base wage rate of employees, while continuing to comply with the provisions of Section 6 (relating to the minimum wage) and the provisions of Section 7 as that section existed prior to the currently contemplated amendments. The contemplated rate reduction would be made systematically in the wages of all employees, and would constitute a reduction for all purposes of the wage rate previously in effect. You question whether such a reduction would, under the provisions of Section 8, be held to constitute a violation of Section 15(a)(3) of the Act.

Based on the facts set forth above, and in the absence of other significant facts, it is my opinion that the wage reduction described would not, in and of itself, involve the application of Section 8, and would thus not be held to constitute a violation of Section 15(a)(3) of the Act.

I trust this is responsive to your inquiry. If I can be of further assistance, please feel free to call upon me.

Sincerely,

FRANCIS X. LILLY.

Again, I want to commend all of the people involved with this for bringing forth a speedy and equitable reconciliation of these very difficult problems.

Mr. DAUB. Mr. Speaker, I rise in support of H.R. 3530, a bill that will ease the effects of the Supreme Court's decision in Garcia versus San Antonio Metropolitan Transit Authority that requires State and local governments to comply with the overtime provisions of the Fair Labor Standards Act. I am a cosponsor of this important legislation and, in fact, introduced a similar measure on September 4, 1985.

The National League of Cities and the International Cities Managers Association have estimated that compliance with Garcia would cost $1 billion for the coming year. For fire protection service alone, the city of Omaha, NE, predicts the additional cost of overtime would be $370,000 for the coming year.

Without this legislation, flexible and innovative employment practices—many of which are negotiated between local governments and municipal workers' unions—will no longer be possible. Additionally, H.R. 3530 will resolve the problems that the Garcia decision created for individuals who volunteer their time to State and local governments.

I urge expedited action on H.R. 3530 and companion legislation in the other body (S. 1570) to resolve confusion that the Supreme Court's decision has created for State and local governments.

Mr. FRENZEL. Mr. Speaker, H.R. 3530 is a bill which must be promptly passed to negate some of the worst effects of the Garcia case.

The bill is not the best solution. The committee could have done a better job by adopting any one of several proposals to reverse the Garcia decision. H.R. 3530 gives only partial refief.

Nevertheless, the Garcia problem is so severe for our local governments that we must pass this partial solution. H.R. 3530 is the only relief the committee will give us. We have no choice but to accept it.

Perhaps the Senate will do better. I hope so. Our local governments deserve the maximum flexibility so that they can give maximum service for a minimum tax cost.

For now, we must pass H.R. 3530.

Mr. FUQUA. Mr. Speaker, I rise in support of H.R. 3530, the Fair Labor Standards Amendments, of which I am a cosponsor. This measure is of critical importance to the communities in the Second Congressional District of Florida, which I am privileged to represent.

The Garcia ruling may place a burden on New York and Los Angeles. For the cities and towns in my district, it is catastrophic in its implications. These communities simply cannot afford to pay time-and-a-half for overtime work, particularly for the police and fire personnel. It could lead to serious financial burdens and inadequate protection for the people.

H.R. 3530 gives communities a choice of either cash or compensatory time off. This is fair and equitable to all. Police officers and firefighters deserve recognition for the extra hours their particular jobs require. They should receive some form of compensation. It will now be up to each community to decide whether or not they can afford a cash outlay or permit these people additional time off.

I believe H.R. 3530 is good legislation and I commend the Education and Labor Committee for bringing the bill to the House floor in a timely manner. This legislation deserves our support and our vote today to end the confusion and disarray caused by Garcia. I urge my colleagues to join me in support of H.R. 3530.

Mr. MARTINEZ. Mr. Speaker, I rise in strong support of H.R. 3530, the Fair Labor Standards Amendments of 1985.

I would like to offer a perspective I am sure is shared by those of us who have served our communities on a local level, regarding the Garcia decision. Local governments have always been limited in their abilities to provide services to their communities. They are dependent upon both their tax base and their share of funds that come from State and local taxes, and these moneys collected directly determine the level of services provided to their communities. Local governments have to be very frugal in both their outlays for salaries and administrative costs and in the services they provide such as police and fire protection, street and sewer maintenance, recreation and parks, library services, and the many other services that make a community liveable. Often forgotten is the difference between companies engaged in private enterprise and local governments. Businesses can always add on the extra administrative costs incurred into the price of product and still maintain a profit margin, but cities don't have this luxury. They are always limited by the revenues collected, and are hard pressed to maintain adequate levels of service to their community in the best of times. When extra expenses are added on to their budgets, services are often cut, and, in the end, the community which the local government serves loses.

This necessity for local governments to be good money managers has restricted the amount of overtime that cities could pay its workers. Most employee groups, to their credit, have recognized the special circumstances which local governments face, and have agreed to take comp time in lieu of pay for extra hours worked in order to keep community services at an adequate level. In fact, many employees such as police and firefighters in my home State of California have actually come to prefer having comp time instead of overtime pay for those extra hours worked. To them, the extra time to spend on projects that benefit themselves, their homes, their future and their families, are more important than the cash they could earn.

These employee groups and local governments have negotiated comp time provisions into their contracts to the benefit of the employee, the local government, and ultimately, the community in general. These agreements for comp time have worked

well, and I am pleased to see that H.R. 3530 will allow this practice to continue.

Another related aspect which I am pleased to see included in H.R. 3530 is the allowed deferment until August 1, 1986 for local governments to pay employees for the overtime pay earned as a result of the Garcia decision after April 15, 1986. Again, local governments are limited in the amounts of revenue it can raise, and the overtime pay owed after April 15, the effective date of H.R. 3530, would saddle local governments with an extra burden in the middle of fiscal year. This delay will allow local governments to adequately figure in the extra costs of the Garcia decision into its 1987 budgets without unfairly having the extra cost placed on its 1986 budgets which have already been allocated and have little flexibility for new costs. This delay until August 1 will not allow local governments to back away from their obligations to employees, but rather ensure the local governments will continue to maintain those necessary city services, budgeted on July 1, 1985, throughout the 1986 fiscal year. Local governments make a commitment every year on July 1 to provide services at certain levels for 12 months, and I am glad to see, with this deferment, that local governments will be able to honor this commitment without an extra burden in the middle of the year.

In conclusion, I am pleased that the compromise between local governments and organized labor has been worked out, and I urge my colleagues to vote for H.R. 3530.

Mr. GILMAN. Mr. Speaker, I rise in strong support of H.R. 3530, legislation that would change overtime benefits for State and local government employees. I commend the gentleman from Pennsylvania [Mr. MURPHY], for introducing this bill which will provide an equitable and reasonable solution to the problem of how best to comply with the recent Supreme Court decision, Garcia versus San Antonio Metropolitan Transit Authority (February 1985).

In the Garcia case, the Supreme Court ruled that overtime pay requirements of the Fair Labor Standards Act apply to State and local employees. Interpretations of previous decisions affirming State authority over functions not specifically reserved for Congress had exempted State and local public employers from the act's purview. State and local government officials estimate the compliance cost of the Garcia decision at over $1 billion.

H.R. 3530 would ease the impact of the Court ruling by deferring public employer liability for overtime and related paperwork violations of the Fair Labor Standards Act until April 15, 1986, for those public employees affected by the Garcia decision, and by permitting employees to substitute compensatory time for overtime payment at a rate of 1½ hours per hour worked. Certain limits shall be placed on accrued compensatory hours, with cash compensation for overtime after those limits are reached.

This bill is the result of negotiations conducted in September between labor unions representing public employees, and public employer organizations, including the U.S. Conference of Mayors, the National League of Cities, and the National Association of Counties. The Congressional Budget Office estimates that no costs would be associated with enactment of H.R. 3530. This bill enjoys wide bipartisan support, as well as the support of the administration. Indeed, the Labor Department had intended to start implementing the decision on October 15, but Labor Secretary William E. Brock III has postponed the enforcement date to November 1 to give us in Congress time to enact legislation which will comply with the Garcia decision.

I am confident that this bill will be mutually beneficial to the employees and employers affected, for it allows workers the freedom to receive deserved compensation in the manner they prefer while reducing the compliance cost of the Supreme Court ruling for public employers. Many of the hard-working people employed by our State and local governments value their private time more than the overtime pay they could earn. For example, I was recently contacted by a policewoman in my district who urged me to support H.R. 3530. She told me that she would much rather give back to her twin babies the time she spent away from them than to receive any extra pay. I believe that the countless other public workers who feel as this employee does should have the option of taking compensatory time, in lieu of overtime pay. Accordingly, I urge my colleagues to join me in supporting H.R. 3530, to allow public employees to substitute compensatory time for overtime pay and to defer public employer liability for overtime until April 15, 1986.

Mr. BONKER. Mr. Speaker, last February's Supreme Court decision in Garcia against San Antonio, while addressing a serious labor concern, created a potentially devastating financial situation for State and local governments around the country. The decision that employees of State and local governments were not only entitled to overtime wages, but were entitled to these wages effective the date of the court's decision, February 16, 1985, would have created a situation of serious economic distress for municipalities nationwide.

Congress has acted swiftly to develop a compromise solution to this problem that balances the economic concerns of the governments with the need for fairness and adequate compensation for our public employees. Congressman MURPHY's bill, H.R. 3530, which I strongly support, provides State and local governments with an alternative to strict cash compensation for overtime work. Up to a certain point, they may offer compensatory time at the rate of time-and-a-half for overtime hours worked. This will become effective April 15, 1986, to allow local government units to make necessary adjustments.

I believe all sides can be pleased by this compromise solution, which provides local public employees with the financial flexibility necessary to adequately provide the services unique to local governments. It also responds to the compensation needs of public employees like police and firemen whose jobs require demanding, unpredictable hours.

It is not often in Congress that we are able to reach a compromise that truly represents a good solution for all sides. This is one of those rare instances, and I commend all the members of the committee, affected labor groups, and local government units who worked so hard to make this compromise a reality.

Finally, I would like to commend the Department of Labor their willingness to postpone enforcement of the Supreme Court Garcia decision until Congress had an opportunity to develop a solution, and I urge the President to sign this legislation into law without delay.

Mr. ECKART of Ohio. Mr. Speaker, I support H.R. 3530, the Fair Labor Standards Amendments of 1985, and commend my colleagues on the Education and Labor Committee for their excellent work on this matter.

Following the Supreme Court's February decision in the Garcia versus Samta case, I received many calls and letters from municipal governments throughout the State of Ohio that this ruling would have an extremely adverse impact on their budgets. The Court's decision overruled its 1976 opinion that congressional inclusion of State and local employees under the requirements of the Fair Labor Standards Act was unconstitutional. In its February decision in Garcia, the Court found that the 1974 FSLA amendments passed by the Congress were indeed not unconstitutional and ruled that all State and local governments must pay their workers overtime for the extra hours of overtime they worked.

The Department of Labor, shortly following this decision, announced that it would begin enforcing the Court's decision by October 15th of this year and would determine these governments liable for overtime pay as far back as April 15th of this year. Given that the Court's decision was only handed down in February, this action by the administration was unduly harsh. Even in 1974, when Congress first brought State and local employees under the FSLA, it granted the governments 2½ years to come under compliance with the new law. This swift action by the Reagan administration, following the Garcia decision, only served to increase alarm among the municipal governments that their budgets would be severely damaged by this ruling.

But, thanks to the members of the Education and Labor Committee, who worked closely with our colleagues across the Hill, this impending crisis has been averted. H.R. 3530 properly addresses the concerns of these State and local governments while ensuring that their employees are properly compensated for the extra hours they put into their work. In addition, the legislation gives these governments sufficient time to reallocate their resources to comply with this new requirement.

I urge my colleagues to swiftly approve this legislation, which both protects the rights of our State and local workers while

addressing the concern of these governments.

Mr. AUCOIN. Mr. Speaker, I rise in strong support of H.R. 3530, amending the Fair Labor Standards Act. I want to commend the members and staff of the House Labor Standards Subcommittee, and in particular my friends Congressman MURPHY, the subcommittee chairman, Congressman HAWKINS, chairman of the Education and Labor Committee, and Congressmen BARTLETT and JEFFORDS for their hard work and their willingness to listen to all sides in this complex issue.

I believe Congress has tackled a complex and controversial issue and come up with a workable compromise. That doesn't seem to happen often enough in Washington.

Mr. Speaker, last spring when the Supreme Court made its now famous Garcia ruling, the local government employees must be covered by the Fair Labor Standards Act, it was hailed by those who felt local government employees deserved the same rights and protections that both Federal workers and those in the private sector enjoy. However, local governments began assessing the costs of these new statutes, which denied the use of compensatory time for payment of overtime hours worked, and realized that they would either have to cut services or raise taxes in order to meet these new labor costs for which no money had been budgeted.

In Oregon this decision was met with almost universal opposition. Although most Oregonians agreed that local government employees throughout the country deserved the protections of the Fair Labor Standards Act, these protections were redundant and unnecessary in Oregon, which has very strict State labor laws. Local government employees in Oregon felt that this decision denied them the benefits which they had agreed to in collective bargaining negotiations, including the right to be "paid" in comp-time, rather than in cash, for overtime hours worked. This is an arrangement which can be very beneficial to some employees, and they wanted to continue to have this option available. Local governments agreed that because the pay and overtime contracts with employees had been agreed to under collective bargaining arrangements, there was no need for the Federal Government to intercede in these mutually agree upon contracts.

With the tremendous Federal deficit now crippling our economy, the Federal Government is being forced to cut back on programs that assist State and local governments. This is hard enough on local governments without the added expense which the Garcia decision created. It is no wonder that many of the cities and counties in my congressional district felt frustration over this situation. I heard from the mayors of Tigard, Newberg, Astoria, North Plains, Portland, Sherwood, Columbia City, and Hillsboro. I also heard from county commissioners in Yamhill, Clatsop, and Tillamook Counties. The Garcia decision also offended fire fighters, both paid and volunteers. I was informed of the adverse effects of this decision on fire departments by the Tualatin Rural Fire Protection District and the Washington County Fire District No. 1.

The Garcia decision denied workers in Oregon some of their collective bargaining rights, and substantially increased the cost to local governments.

Although this legislation before us does not rescind the Garcia decision, it does address the major concerns raised by these local government officials and their employees. The issue of "comp time" has been resolved, as has the controversial aspect of retroactive liability. The confusion over what constitutes a "volunteer" has also been cleared up. These were the major stumbling blocks which Chairmen MURPHY and HAWKINS had to contend with, and 6 months ago it looked as though a consensus would never be reached. However, it is a tribute to their hard work, and to the hard work of the representatives of both the local governments and the employee unions that we have before us a bill which both sides have unanimously endorsed. Although neither side is completely satisfied with this legislation, the fact that it is endorsed by the National League of Cities, the National Association of Counties, and the American Federation of State, County, and Municipal Employees of the AFL–CIO shows that it is a genuine compromise in the truest sense of the word.

It is now up to the Department of Labor to assist the local governments with the technical questions which will invariably arise once this legislation becomes law. It is essential that we avoid the confusion, delay, and uncertainty which arose over the Supreme Court's original decision last February. With the implementation of this legislation on April 15, 1986, the Department of Labor has a responsibility to see that local governments have all the necessary information available to them in order to carry out these new statutes. I know the local offices of Federal Wage and Hour are willing to assist local governments with their questions regarding the Fair Labor Standards Act, and am pleased that the Department of Labor has initiated a toll-free number to assist in this process. That number is 1–800–233–3572.

Mr. DASCHLE. Mr. Speaker, I rise today in strong support of H.R. 3530, legislation which would amend the Fair Labor Standards Act and applaud my colleagues on the committee for offering this compromise solution addressing the problems of the Supreme Court decision in the recent Garcia case.

The House of Representatives took an early initiative by approving an amendment on the 1986 Labor Department appropriations bill calling on the Department to suspend enforcement of the Garcia decision pending further congressional action. The Labor Department followed suit by voluntarily agreeing to delay implementation of these standards until we had the opportunity to consider a comprehensive legislative solution. The legislation before us today represents that solution.

H.R. 3530, of which I am pleased to cosponsor, allows for either monetary compensation or compensatory time off for public employees working overtime. It also gives State and local governments until April 15, 1986, to revise personnel practices and exempts volunteers from coverage.

Let me emphasize that this represents a major compromise effort. The bill is the culmination of the efforts of local governmental associations and representatives of public employee unions, among them the National League of Cities, the National Association of Governmental Employees, National Governors' Association, AFSCME, and the Amalgamated Transit Workers, and their willingness to reach an acceptable solution. Because all parties were able to resolve this issue through compromise, it clearly demonstrates the willingness of all sides to avoid what could have resulted in an unnecessary stalemate.

I would ask that a summary of the bill be printed in the RECORD.

I. COMPENSATORY TIME

Public safety, emergency service or seasonal workers may not accumulate more than 480 hours of compensatory time, while other state and local workers may not accumulate more than 180 hours. After these hours have been reached, employees must be paid overtime pay equivalent at least to time-and-a-half. Also, the bill provides for employees to be paid for accrued compensatory time at the time of termination, based on average pay over the past three year time period.

II. SPECIAL DETAIL, OCCASIONAL WORK AND SUBSTITUTION

Special detail, occasional and mutual aid employment for a second employer or in a second capacity will not be considered in calculating overtime pay.

In addition, public employees may substitute for one another without the substitution affecting overtime pay.

III. VOLUNTEER WORK

The bill exempts volunteers from coverage of the Fair Labor Standards Act. Also, it exempts public agencies from violations of minimum wage laws for services performed by volunteers before April 15, 1986.

IV. LEGISLATIVE EMPLOYEES EXEMPTIONS

State and local legislative employees, except library employees, are exempt from coverage.

OTHER PROVISIONS

The bill allows public employers to defer monetary overtime compensation for hours worked after April 15, 1986, until August 1, 1986.

It also bars discrimination against any employees who may have asserted coverage under the FLSA overtime provisions.

I would urge this body to approve this vitally important legislation and end the uncertainty which has resulted from the Garcia decision.

Mr. JEFFORDS. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Pennsylvania [Mr. Murphy] that the House suspend the rules and pass the bill, H.R. 3530, as amended.

The question was taken; and (two-thirds having voted in favor thereof)

the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

Mr. MURPHY. Mr. Speaker, I ask unanimous consent to take from the Speaker's table the Senate bill (S. 1570) to amend the Fair Labor Standards Act of 1938 to provide rules for overtime compensatory time off for certain public agency employees, to clarify the application of that act to volunteers and for other purposes, and ask for its immediate consideration.

The Clerk read the title of the Senate bill.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

The Clerk read the Senate bill, as follows:

S. 1570

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE; REFERENCE TO ACT

SECTION 1. (a) SHORT TITLE.—This Act may be cited as the "Fair Labor Standards Amendments of 1985".

(b) REFERENCE TO ACT.—Whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be a reference to a section or other provision of the Fair Labor Standards Act of 1938.

COMPENSATORY TIME

SEC. 2. (a) COMPENSATORY TIME.—Section 7 (29 U.S.C. 207) is amended by adding at the end the following:

"(o)(1) Employees of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency may receive, in accordance with this subsection and in lieu of overtime compensation, compensatory time off at a rate not less than one and one-half hours for each hour of employment for which overtime compensation is required by this section.

"(2) A public agency may provide compensatory time under paragraph (1) only—

"(A) pursuant to—

"(i) applicable provisions of a collective bargaining agreement, memorandum of understanding, or any other agreement between the public agency and representative of such employees; or

"(ii) in the case of employees not covered by subclause (i), an agreement or understanding arrived at between the employer and employee before the performance of the work; and

"(B) if the employee has not accrued compensatory time in excess of the limit applicable to the employee prescribed by paragraph (3).

In the case of employees described in clause (A)(ii) hired prior to April 15, 1986, the regular practice in effect on April 15, 1986, with respect to compensatory time off for such employees in lieu of the receipt of overtime compensation, shall constitute an agreement or understanding under such clause (A)(ii). Except as provided in the previous sentence, the provision of compensatory time off to such employees for hours worked after April 14, 1986, shall be in accordance with this subsection.

"(3)(A) No overtime compensation in the form of compensatory time off may be accrued by any employee of a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, in excess of 480 hours for hours worked after April 15, 1986. Any such employee who, after April 15, 1986, has accrued 480 hours of compensatory time off shall, for additional overtime hours of work, be paid overtime compensation.

"(B) If compensation is paid to an employee for accrued compensatory time off, such compensation shall be paid at the regular rate of compensation earned by the employee at the time the employee receives such payment.

"(4) An employee who has accrued compensatory time off authorized to be provided under paragraph (1) shall, upon termination of employment, be paid for the unused compensatory time at the regular rate of compensation earned by the employee at the time the employee receives compensation for overtime.

"(5) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency—

"(A) who has accrued compensatory time off authorized to be provided under paragraph (1), and

"(B) who has requested the use of such compensatory time,

shall be permitted by the employee's employer to use such time within a reasonable period after making the request if the use of the compensatory time does not unduly disrupt the operations of the public agency.

"(6) For purposes of this subsection—

"(A) the term 'overtime compensation' means the compensation required by subsection (a), and

"(B) the term 'compensatory time' or 'compensatory time off' means hours during which an employee is not working and which are not counted as hours worked during the applicable workweek or other work period for purposes of overtime compensation, and for which the employee is compensated at the employee's regular rate.".

(b) EXISTING COLLECTIVE BARGAINING AGREEMENTS.—A collective bargaining agreement which is in effect on April 15, 1986, and which permits compensatory time off in lieu of overtime compensation shall remain in effect until its expiration date unless otherwise modified, except that compensatory time shall be provided after April 14, 1986, in accordance with section 7(o) of the Fair Labor Standards Act of 1938 (as added by subsection (a)).

(c) LIABILITY AND DEFERRED PAYMENT.—(1) No State, political subdivision of a State, or interstate governmental agency shall be liable under section 16 of the Fair Labor Standards Act of 1938 for a violation of section 7 or 11(c) (as it relates to section 7) of such Act occurring before April 15, 1986, with respect to any employee of the State, political subdivision, or agency who would not have been covered by such Act under the Secretary of Labor's special enforcement policy on January 1, 1985, and published in sections 775.2 and 775.4 of title 29 of the Code of Federal Regulations.

(2) A State, political subdivision of State, or interstate governmental agency may defer unti August 1, 1986, the payment of overtime compensation under section 7 of the Fair Labor Standards Act of 1938 for hours worked after April 14, 1986.

SPECIAL DETAILS, OCCASIONAL OR SPORADIC EMPLOYMENT, AND SUBSTITUTION

SEC. 3. (a) SPECIAL DETAIL WORK FOR FIRE PROTECTION AND LAW ENFORCEMENT EMPLOYEES.—Section 7 (29 U.S.C. 207) is amended by adding after subsection (o) (added by section 2) the following:

"(p)(1) If an individual who is employed by a State, political subdivision of a State, or an interstate governmental agency in fire protection or law enforcement activities (including activities of security personnel in correctional institutions) and who, solely at such individual's option, agrees to be employed on a special detail by a separate or independent employer in fire protection, law enforcement, or related activities, the hours such individual was employed by such separate and independent employer may be excluded by the public agency employing such individual in the calculation of the hours for which the employee is entitled to overtime compensation under this section if the public agency—

"(A) requires that its employees engaged in fire protection, law enforcement, or security activities be hired by a separate and independent employer to perform the special detail,

"(B) facilitates the employment of such employees by a separate and independent employer, or

"(C) otherwise affects the condition of employment of such employees by a separate and independent employer.".

(b) OCCASIONAL OR SPORADIC EMPLOYMENT.—Section 7(p) (29 U.S.C. 207), as added by subsection (a), is amended by adding at the end the following:

"(2) If an employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency undertakes, on an occasional or sporadic basis and solely at the employee's option, part-time employment for the public agency which is in a different capacity from any capacity in which the employee is regularly employed, the hours such employee was employed in performing the different employment may be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.".

(c) SUBSTITUTION.—(1) Section 7(p) (29 U.S.C. 207), as amended by subsection (b), is amended by adding at the end the following:

"(3) If an individual who—

is employed by a public agency which is a State, political subdivision of a State, or an interstate governmental agency,

agrees, with the approval of the public agency and solely at the option of such individual, to substitute during scheduled work hours for another individual who is employed by such agency in the same activities, the hours such employee worked as a substitute may be excluded by the public agency in the calculation of the hours for which the employee is entitled to overtime compensation under this section.".

(2) Section 11(c) (29 U.S.C. 211(c)) is amended by adding at the end the following: "The employer of an employee who performs substitute work described in section 7(p)(4) may not be required under this subsection to keep a record of the hours of the substitute work.".

VOLUNTEERS

SEC. 4. (a) DEFINITION.—Section 3(e) (29 U.S.C. 203(e)) is amended—

(1) by striking out "paragraphs (2) and (3)" in paragraph (1) and inserting in lieu thereof "paragraphs (2), (3), and (4)", and

(2) by adding at the end the following:

"(4)(A) The term 'employee' does not include any individual who is a volunteer for a public agency which is a State, a political subdivision of a State, or an interstate governmental agency, if (i) the individual receives no compensation or is paid expenses, reasonable benefits, or a nominal fee to perform the services for which the individual volunteered and (ii) such services are not the same type of services which the individual is employed to perform for such public agency.

"(B) An employee of a public agency which is a State, political subdivision of a State, or an interstate governmental agency may volunteer to perform services for any other State, political subdivision, or interstate governmental agency, including a State, political subdivision or agency with which the employing State, political subdivision, or agency has a mutual aid agreement.".

(b) REGULATIONS.—Not later than March 15, 1986, the Secretary of Labor shall issue regulations to carry out paragraph (4) of section 3(e) (as added by subsection (a) of this section).

(c) CURRENT PRACTICE.—If before April 15, 1986, the practice of a public agency was to treat certain individuals as volunteers, such individuals shall until April 15, 1986, be considered, for purposes of the Fair Labor Standards Act of 1938, as volunteers and not as employees. No public agency which is a State, a political subdivision of a State, or an interstate governmental agency shall be liable for a violation of section 6 occurring before April 15, 1986, with respect to services deemed by that agency to have been performed for it by an individual on a voluntary basis.

STATE AND LOCAL LEGISLATIVE EMPLOYEES

SEC. 5. Clause (ii) of section 3(e)(2)(C) (29 U.S.C. 203(e)(2)(C)) is amended—

(1) by striking out "or" at the end of subclause (III),

(2) by striking out "who" in subclause (IV),

(3) by striking out the period at the end of subclause (IV) and inserting in lieu thereof ", or", and

(4) by adding after subclause (IV) the following:

(V) is an employee in the legislative branch or legislative body of that State, political subdivision, or agency and is not employed by the legislative library of such State, political subdivision, or agency.".

EFFECTIVE DATE

SEC. 6. The amendments made by this Act shall take effect April 15, 1986. The Secretary of Labor shall before such date promulgate such regulations as may be required to implement such amendments.

EFFECT OF AMENDMENTS

SEC. 7. The amendments made by this Act shall not affect whether a public agency which is a State, political subdivision of a State, or an interstate governmental agency is liable under section 16 of the Fair Labor Standards Act of 1938 for a violation of section 6, 7, or 11 of such Act occurring before April 15, 1986, with respect to any employee of such public agency who would have been covered by such Act under the Secretary of Labor's special enforcement policy on January 1, 1985, and published in section 775.3 of title 29 of the Code of Federal Regulations.

DISCRIMINATION

SEC. 8. An employee of a public agency who asserts coverage under the Fair Labor Standards Act of 1938 between February 19, 1985, and April 14, 1986, shall be accorded the same protection against discharge or discrimination as is available under section 15(a)(3) of the Fair Labor Standards Act of 1938.

MOTION OFFERED BY MR. MURPHY

Mr. MURPHY. Mr. Speaker, I offer a motion.

The Clerk read as follows:

Mr. MURPHY moves to strike all after the enacting clause of the Senate bill, S. 1570, and to insert in lieu thereof the text of the bill, H.R. 3530, as passed by the House.

The motion was agreed to.

The Senate bill was ordered to be read a third time, was read the third time, and passed.

The title was amended so as to read: "a bill to amend the Fair Labor Standards Act of 1938 to authorize the provision of compensatory time in lieu of overtime compensation for employees of States, political subdivisions of States, and interstate governmental agencies, to clarify the application of the Act to volunteers, and for other purposes."

A motion to reconsider was laid on the table.

A similar House bill (H.R. 3530) was laid on the table.

GENERAL LEAVE

Mr. MURPHY. Mr. Speaker, I ask unanimous consent that all members may have 5 legislative days in which to revise and extend their remarks on H.R. 3530, the bill just passed.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Pennsylvania?

There was no objection.

CLARIFYING APPLICATION OF SECTION 2406 OF TITLE 10, UNITED STATES CODE

Mr. ASPIN. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 3606) to clarify the application of section 2406 of title 10, United States Code, relating to cost and price management, and to delay the effective date of such provision.

The Clerk read as follows:

H.R. 3606

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AMENDMENT TO SECTION 2406 OF TITLE 10, UNITED STATES CODE, RELATING TO COST AND PRICE MANAGEMENT

Section 2506(c) of title 10, United States Code, as added by section 917 of the Department of Defense Authorization Act of 1986, is amended by adding at the end thereof the following new paragraph:

"(3) Nothing in this section shall require a defense agency to record, in connection with any covered contract, any information referred to in this section if the contractor under such contract does not maintain such information on the effective date of this section.".

SEC. 2. EFFECTIVE DATE.

(a) IN GENERAL.—Section 2406 of title 10, United States Code (as added by section 917 of the Department of Defense Authorization Act, 1986) and the amendment made by section 1 of this Act shall become effective 180 days after the date of enactment of the Department of Defense Authorization Act, 1986.

(b) CONTRACTS TO WHICH APPLICABLE.—Section 2406 of title 10, United States Code, shall be effective with respect to covered contracts (as defined in subsection (a)(1) of such section) entered into by a defense agency (as defined in subsection (a)(2) of such section) on or after the date of the enactment of such section and shall be effective with respect to covered contracts entered into by a defense agency before such date if such contracts have not been completed or otherwise terminated before such date.

The SPEAKER pro tempore. Is a second demanded?

Mr. DICKINSON. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Wisconsin [Mr. ASPIN] will be recognized for 20 minutes and the gentleman from Alabama [Mr. DICKINSON] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Wisconsin [Mr. ASPIN].

□ 1315

Mr. ASPIN. Mr. Speaker, I would like to explain a little bit about this bill to my colleagues. The bill here before you is the bill to clarify something that will be in the authorization bill before the House tomorrow afternoon. This is a bill that is a freestanding piece of legislation, but what it does is deals with some ambiguities in the legislation which will be before the House tomorrow afternoon, the authorization bill.

That authorization bill contains a section having to do with labor costs. It is a way, to put it in the best language I can, it is getting information from companies to determine whether in fact defense contractors are as efficient as they should be.

The provision in the bill tomorrow afternoon is a provision which was dictated by action on the House and on the Senate floor. The exact same piece of language legislation passed both Houses. It was therefore not subject to any amendment in conference.

We, because of the constraints of the legislation, had to accept exactly the same language in the House; the same language passed the House that passed the Senate; we had to put that language into the conference.

It does contain a number of ambiguities as drawn. It does have a few things that are not exactly clear as to

what was intended. In the report of the managers on the bill, an interpretation was put in that said that this provision shall apply only to future contractors; that was not in the language of the bill; it was in the statement of managers.

The statement of managers' language was, from the point of view of a number of us on this side of the aisle, incorrect. That was not the intent, we thought, of the language as it passed the House; we don't know what happened in the Senate, but it was not the intent of the language.

So there was a statement in the language of the statement of managers which in fact does not correspond to what we thought the bill meant when it passed the House.

To clear up that particular misunderstanding and to clarify two or three other misunderstandings or ambiguities in the bill because we couldn't deal with it in conference in any substantive way, the bill before you is a bill that has come from the House Armed Services Committee, sponsored by me and the gentlewoman from California [Mrs. BOXER] to try and clarify the language in the authorization bill.

It does three things: First, it says that the information required in the authorization bill shall be required 6 months after the date of enactment of the authorization bill. So it establishes the exact date upon which this provision of the bill will take place.

Second, it says that as of that date, all information; existing contracts as well as prospective contracts, that that information is required under the language of the bill.

Third, it clarifies a point by saying, unambiguously, that this information is not required of any corporation doing business with Defense which does not already keep that information now in its records. That was the intention of the authors; it was not quite clear in the language that passed the House and the Senate in the authorization bill.

So it does clarify the language in the authorization bill on three very, very important matters. I, therefore, think it is an important piece of legislation; I think it clarifies the language in the House bill, the authorization bill; it is, I think, going to be beneficial to the people who want this information to have this information clarified.

Yet importantly, I think it is also important to the defense contractors to have this issue clarified. It clearly delineates now who is and who is not required to do what under this provision of the law. Without that, the authorization bill, which comes before the House tomorrow will not be clear on these issues.

Mr. Speaker, I reserve the balance of my time.

Mr. DICKINSON. Mr. Speaker, I yield myself such time as I may consume.

Mr. DICKINSON. Mr. Speaker, as has been pointed out today, we are considering H.R. 3606, a bill to clarify an ambiguity in section 917 of the conference report, S. 1160, the Department of Defense authorization bill for fiscal year 1986.

This provision which relates to the imposition of standard labor hour reporting for defense contractors was one of the amendments offered to the authorization bill which had never been subject to hearings or committee review. I opposed it at the time for that reason, because we did not know what the effect was; we did not know who it would affect; we did not know when the effective date would be; and we were writing new legislation on the floor without really having a feel for the import.

Now, I think it is bad legislation, as I have referred to it before. Since the chairman is still here, let me see if I can clear up something else that is still an ambiguity even in the proposed legislation, and I would like to propound a question to him.

We wrote in the authorization language, after it passed, what I thought was common sense. That is, we are not going to pass legislation that is retroactive in effect, going back to say that over 100,000 contracts now in existence would automatically be subjected to this provision, and which, in effect, would say that each of the contracts would have to be renegotiated with the Defense Department.

This bill that we are considering today says that we are trying to clear this up. So, we are going to wait 6 months, 180 days, and that will be the effective date. Now, we have agreed that that is the impact and the purpose.

My question is, when that 6 months runs, and the effective date is triggered, what does that cover? Does that cover the contracts 6 months back of that time that were in effect when the authorization bill was passed, or does it take effect that date? I would like to establish this for legislative history.

Mr. ASPIN. If the gentleman will yield, my interpretation is that it would cover the contracts in effect as of the date that the provision passes.

Mr. DICKINSON. Six months hence.

Mr. ASPIN. Correct.

Mr. DICKINSON. And not go back 6 months and capture all of those contracts that might have since expired.

Well, I would hope that would be the case, because to do otherwise would certainly be unfair, to make it retroactive in nature; and that is the reason I oppose this.

I would also like to point out, Mr. Speaker, and register a complaint as to how this particular armed services bill, the defense authorization bill, is being handled; which as far as I know is unique. We are told that we have got to come in now and correct an oversight of an amendment that was offered during the floor debate of the authorization bill before we can bring the conference report back and even consider it; we have got to correct what should have been done, and if this does not pass, I gather that we cannot even get the conference report on the authorization bill up tomorrow.

Would the chairman clarify that point? If this should not pass, we will still have the conference report brought up tomorrow, anyway?

Mr. ASPIN. If the gentleman will yield, I believe the answer is "yes," we would have the authorization brought up before. It is important, though, that this matter be clarified before we vote on the authorization bill, because clearly the issues in the authorization bill need to be clarified before they are on the floor; and I think it would not be fair to the Congress to say, "Well, you pass the authorization bill and then we will clarify it in subsequent language." We ought to have the subsequent language and the clarification point out there so that everybody understands what they will be voting on tomorrow.

Mr. DICKINSON. I will say I think it is a very unusual procedure, and I think that the Committee on Armed Services has been the recipient in the last few years of several unique procedures that the other committees have not been subjected to.

I can recall one occasion when we had an authorization bill complete, asking for a rule; they put it on a sidetrack and brought out the appropriations bill to the floor and passed it while we were still waiting to bring our authorization to the floor. That was before the present chairman of the Rules Committee was the chairman.

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But we have been in a number of unusual situations here. For instance, I cannot think of any other committee of the Congress that has had more special conferees upon it to a conference than there were members of the Committee on Armed Services in that conference. We pass a bill, we go to conference with the Senate, and for the past 2 years we have had more, a total of more special conferees than there were members of our committee there. So I really think that we on the Committee on Armed Services have not been in recent times treated fairly in some instances. We certainly have been treated differently from other committees of the Congress.

I would like to see this come to a halt. I do not know how we are going to bring it about in the near future,

but I certainly will work toward that end.

I think the legislation before us should not have been here in the first place. I understand the need to clarify it. Because I opposed it on the floor initially, I do not think we should have fashioned it in the way that we did. This is playing catchup ball, trying to correct it.

Mr. Speaker, I am going to vote against it, but I recognize the fact that it is needed just to clarify what should have been done in the initial instance.

Mr. Speaker, I yield back the balance of my time.

Mr. ASPIN. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Wisconsin [Mr. ASPIN] that the House suspend the rules and pass the bill, H.R. 3606.

The question was taken.

Mr. ASPIN. Mr. Speaker, on that I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

GENERAL LEAVE

Mr. ASPIN. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on the bill, H.R. 3606.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Wisconsin?

There was no objection.

THE MISSISSIPPI TECHNOLOGY TRANSFER CENTER ACT OF 1985

Mr. FUQUA. Mr. Speaker, I move to suspend the rules and pass the bill, H.R. 3235, to authorize the Administrator of the National Aeronautics and Space Administration to accept title to the Mississippi Technology Transfer Center to be constructed by the State of Mississippi at the National Space Technologies Laboratories in Hancock County, MS; as amended.

The Clerk read as follows:

H.R. 3235

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORIZATION FOR ADMINISTRATOR OF NATIONAL AERONAUTICS AND SPACE ADMINISTRATION TO ACCEPT TITLE TO MISSISSIPPI TECHNOLOGY TRANSFER CENTER.

The Administrator of the National Aeronautics and Space Administration—

(1) may accept title to the Mississippi Technology Transfer Center on behalf of the United States; and

(2) may, subject to the availability of appropriations therefor, enter into an agreement with the Governor of Mississippi with respect to the Center in accordance with the provisions of section 9 of Chapter 170 of the Mississippi General Laws of 1985 (as enacted on April 19, 1985).

SEC. 2 LIMITATION ON APPROPRIATIONS.

This Act does not authorize the enactment of new budget authority for a fiscal year before fiscal year 1987.

SEC. 3. DEFINITION OF MISSISSIPPI TECHNOLOGY TRANSFER CENTER.

For purposes of this Act, the term "Mississippi Technology Transfer Center" means any building and related facilities constructed by the State of Mississippi at the National Space Technologies Laboratories in Hancock County, Mississippi, under section 9 of chapter 170 of the Mississippi General Laws of 1985 (as enacted on April 19, 1985) and designated in accordance with such section as the Mississippi Technology Transfer Center.

The SPEAKER pro tempore. Is a second demanded?

Mr. LUJAN. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Florida [Mr. FUQUA] will be recognized for 20 minutes and the gentleman from New Mexico [Mr. LUJAN] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Florida [Mr. FUQUA].

GENERAL LEAVE

Mr. FUQUA. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks on H.R. 3235, the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida?

There was no objection.

Mr. FUQUA. Mr. Speaker, I yield myself 5 minutes.

Mr. Speaker, I rise in support of the bill H.R. 3235, to authorize the Administrator of the National Aeronautics and Space Administration to accept title to the Mississippi Technology Transfer Center to be constructed by the State of Mississippi at the National Space Technologies Laboratories in Hancock County, MS.

The bill, H.R. 3235, would authorize the Administrator of NASA to accept title to the Mississippi Technology Transfer Center which will be constructed by the State of Mississippi at the National Space Technology Laboratories in Mississippi.

The State of Mississippi has appropriated $4 million for the building at NSTL with the goal of enhancing economic development, improving the transfer of technology, and generating high technology jobs in the area.

There are no costs to NASA involved in either the construction or operation of the building, because the State has appropriated the funds for the construction and because rents from tenants will cover the expenses of operating and maintaining the building.

The bill was drafted in consultation with the NASA Office of General Counsel and NASA does not oppose it. They have suggested a minor amendment which the committee adopted and which I will discuss in a moment.

We need to pass this bill because there are conditions in the Mississippi appropriations bill, and under existing authority, NASA can only accept unconditional gifts. There is a need to move expeditiously in passing this legislation in order to start construction before the appropriated Mississippi funds expire.

The conditions in the Mississippi legislation pose no problem. They are:

First, NASA will be responsible for the building throughout its life.

Second, there will be space in the building for new agencies and contractors including the new Center for Commercialization of Space which will work in remote sensing, and for research projects conducted by institutions of higher learning.

Third, the facility will be named the "Mississippi Technology Transfer Center."

There is no negative impact on NASA programs and some positive impact because NASA researchers and State users of remote sensing data will be located together. In addition, NASA will benefit from the development of more high technology activities in the area, because this will provide a better base of suppliers and employees on which NASA can draw.

NASA has given us assurance that there are no agreements which would force NASA programs to support tenants of the building. That is, there are no hidden rent subsidies.

The committee adopted one small amendment which would protect the Federal Government from various contingencies by making it clear that in agreeing with the Governor of Mississippi to accept and to operate this building, NASA cannot do anything that would obligate us to spend additional money. I believe that this amendment will further improve the bill and protect the Federal Government's interest.

I believe that the bill is worthwhile and I urge all Members to support it.

Mr. LUJAN. Mr. Speaker, I yield 3 minutes to the sponsor of the legislation, the gentleman from Mississippi [Mr. LOTT].

Mr. LOTT. First, Mr. Speaker, I would like to thank the distinguished chairman of the Committee on Science and Technology, the gentleman from Florida [Mr. FUQUA], and the distinguished ranking member of the committee, the gentleman from New Mexico [Mr. LUJAN].

As a matter of fact, there was cooperation of all the members of the committee.

There was a need for this legislation to be handled expeditiously because the State of Mississippi had appropriated and authorized the $4 million in funds to make the Mississippi Technology Transfer Center possible. And of course, at the end of the fiscal year or the beginning of the new legislative session, there could be some questions about whether or not those funds would still be available.

So the committee did cooperate, and we really appreciate that cooperation.

This is an innovative and unique opportunity we have. I am very proud of my State of Mississippi, that our State legislature and the Governor took this action to provide this facility so that the State of Mississippi could cooperate with and transfer information and technology with the various Federal agencies we have there at the National Space Technology Laboratory in Hancock County.

This is not just a facility for NASA, even though NASA is the parent organization that maintains the NSTL. But we have a number of other Federal agencies and programs there that are really very forward looking in what they do and that make use of the information and the technology that we get from NASA. The State of Mississippi wanted to be a part of that effort and be on the center.

There are no hidden rents, there is no obligation on the part of the Federal Government. The State just wanted to have a presence and make sure that they can communicate what is being received from NASA and the other Federal agencies so that the State can make suggestions and work with them.

So it is innovative, it is forward looking, and I think it provides a great opportunity for our State of Mississippi and for the Federal agencies that are there at the NSTL. So I thank the gentleman again at the committee level for making this possible. I am convinced it will be a very good program for the State and also for the Federal agencies we have there at NSTL.

Mr. Speaker, I yield back the balance of my time.

Mr. LUJAN. Mr. Speaker, I yield myself 3 minutes.

Mr. Speaker, I rise in support of H.R. 3235, "the Mississippi Techonology Transfer Act of 1985."

Passage of this legislation is necessary to permit the Administrator of NASA to accept this gift of a $4 million building from the State of Mississippi. Passage of this bill is also a good deal for the taxpayers of our Nation.

This bill does not authorize a single Federal dollar for construction of the center. The entire $4 million has already been appropriated by the State of Mississippi. What the taxpayers get, then, is a $4 million facility for NASA at no cost. In return, NASA will manage and operate the center, allocating a relatively small amount of space to the State of Mississippi for its space-related activities. The rents and fees NASA will collect from the tenants in the building will offset the costs of operating and maintaining the building.

Mr. Speaker, when our Nation is facing one of the worst deficit crises in recorded history, this is exactly the way we should be doing business—at no additional cost to the Federal Government. In fact, in the months and years ahead, we should try to come up with more ways of using unusual and mutually beneficial mechanisms like this one to reduce our Federal deficit.

I urge my colleagues to suport passage of this simple, yet important legislation.

Mr. WALKER. Mr. Speaker, will the gentleman yield?

Mr. LUJAN. I am happy to yield to the gentleman from Pennsylvania.

Mr. WALKER. I thank the gentleman for yielding.

Mr. Speaker, I want to join with the gentleman in congratulating the gentleman from Mississippi who first offered the bill. I was pleased to cosponsor the bill when it arrived at our committee. It is innovative; it is a cooperative approach that can serve as a model for other movements into the high-technology area in the future. I am pleased that we got it to the floor.

Mr. Speaker, I urge the House to pass the bill.

Mr. LUJAN. I thank the gentleman for his comments.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. FUQUA. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. MONTGOMERY. Mr. Speaker, I rise in support of H.R. 3235, legislation introduced by my colleague, Congressman LOTT, which authorizes the National Aeronautics and Space Administration to accept title to a building to be constructed at NASA laboratories in Hancock County, MS, with funds appropriated by the State. The Mississippi Technology Transfer Center will provide space for the expansion of the operations of the National Space Technologies Laboratories, State university research projects, and a center of excellence for remote sensing operated by Mississippi Institute for Technology Development.

This legislation is simple and noncontroversial. It would permit NASA to accept the gift of a facility constructed and furnished entirely by the State of Mississippi. In return, NASA would oversee the maintenance of the building and set aside 20 percent of office space for free occupancy by the State. Since the costs of operating the center would be largely offset by lease payments from the tenants, there is no cost whatsoever to the Federal Government.

The enactment of this agreement between NASA and the State of Mississippi would have long-term, widespread benefits. Construction of the center would boost economic development and generate jobs, while promoting high-technology industry in Mississippi. The building would allow the location of more onsite support contractors and add to the local specialized services and personnel resources available to the NASA laboratories in Hancock County. Additionally, the facility will house newly funded NASA operations in remote sensing from space, which will be conveniently brought together with an ongoing research and development program at the Hancock County laboratories.

The Mississippi Technology Transfer Center represents a significant contribution to NASA's technology transfer program—which is doing work that impacts the entire country. I hope my colleagues will join me in supporting the donation of this property—the proposal holds enormous potential for the State of Mississippi and has been enthusiastically welcomed by NASA.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Florida [Mr. FUQUA] that the House suspend the rules and pass the bill, H.R. 3235, as amended.

The question was taken; and (two-thirds having voted in favor thereof), the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

CONGRESSIONAL AWARD AMENDMENTS OF 1985

Mr. WILLIAMS. Mr. Speaker, I move to suspend the rules and pass the bill, H.R. 3447, to amend and contend the Congressional Award Act, as amended.

The Clerk read as follows:

H.R. 3447

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Congressional Award Amendments of 1985".

SEC. 2. MEMBERSHIP OF THE BOARD.

Section 4 of the Congressional Award Act (2 U.S.C. 803), hereafter in this Act referred to as "the Act", is amended—

(1) in subsection (a)(2), by adding at the end thereof the following: "One of the members appointed under each of subparagraphs (A) through (d) of paragraph (1) shall be a member of the Congress.";

(2) by striking out subsection (b) and inserting in lieu thereof the following:

"(b) Appointed members of the Board shall continue to serve at the pleasure of the officer by whom they are appointed, but (unless reappointed) shall not serve for more than four years."; and

(3) by striking out paragraph (2) of subsection (c) and redesignating paragraphs (3) and (4) as paragraphs (2) and (3), respectively.

SEC. 3. EXTENSION OF AUTHORITY.

Section 9 of the Act (2 U.S.C. 808) is amended by striking out "six years after the date of the enactment of this Act" and inserting in lieu thereof "on November 16, 1988".

SEC. 4. ADMINISTRATIVE PROVISIONS.

(a) SALARY LIMITATION.—Section 3(b) of the Act (2 U.S.C. 802(b)) is amended by adding at the end thereof the following new sentence:

"No salary established by the Board under paragraph (3) shall exceed $75,000 per annum, exept that for calendar years after 1986, such limit shall be increased in proportion to increases in the Consumer Price Index.".

(b) SCHOLARSHIPS.—Section 3(d) is amended by striking out "Gold Medal" and inserting in lieu thereof "Gold, Silver, and Bronze Medals".

(c) REPORT OF ADMINISTRATIVE EXPENDITURES.—Section 3(e)(4) of the Act is amended by inserting before the period at the end thereof the following: "for each member, officer, employee, and consutant of the Board (or of the Corporation established pursuant to section 7(g)(1))".

(d) ANNUAL MEETINGS.—Section 4(f) of the Act is amended by striking out "meet annually at the call of the Chairman" and inserting in lieu thereof "meet at least twice a year at the call of the Chairman (with at least one meeting in the District of Columbia)".

(e) BYLAWS.—Section 4(i) of the Act is amended by adding at the end thereof the following: "Such bylaws and other regulations shall include provisions to prevent any conflict of interest, or the appearance of any conflict of interest, in the procurement and employment actions taken by the Board or by any officer or employee of the Board. Such bylaws shall include appropriate fiscal control, funds accountability, and operating principles to ensure compliance with the provisions of section 7 of this Act. A copy of such bylaws shall be transmitted to each House of Congress not later than 90 days after the date of enactment of the Congressional Award Amendments of 1985 and not later than 10 days after any subsequent amendment or revision of such bylaws.".

(f) RESTRICTION OF SPONSORSHIP ADVERTISING.—Section 7(c) of the Act (2 U.S.C. 806(c)) is amended by adding at the end thereof the following:

"The Board may permit donors to use the name of the Board or the name 'Congressional Award Program' in advertising.".

(g) POWERS AND RESTRICTIONS.—Section 7(a)(1) of the Act (2 U.S.C. 806(a)(1)) is amended by striking out "from sources other than the Federal Government".

(h) EVALUATION BY GAO.—Section 8 of the Act (2 U.S.C. 807) is amended—

(1) by inserting "AND EVALUATION" after "AUDITS" in the heading of such section;

(2) by inserting "(a)" after "SEC. 8"; and

(3) by striking "may be audited" and inserting in lieu thereof "shall be audited at least biennially";

(4) by striking out "at such times as the Comptroller General may determine to be appropriate";

(5) by adding at the end thereof the following:

"(b) The audit performed pursuant to subsection (a) shall at a minimum—

"(1) assess the adequacy of fiscal control and funds accountability procedures of the Board and such corporation; and

"(2) assess the reasonableness of expenses allowed to the Director and other employees of the Board and such corporation.

"(c) In the report of the first audit performed under subsection (a) after the date of enactment of this subsection, the Comptroller General shall include an evaluation of the programs and activities under this Act. Such evaluation shall include an examination of—

"(1) the extent to which the Congressional Award Program and activities under this Act are achieving the purposes stated in section 3(a);

"(2) the adequacy and appropriateness of the standards of achievement and procedures for verifying that individuals satisfy such standards established by the Board;

"(3) the efficacy and adequacy of the Board's fundraising efforts under this Act;

"(4) the organizational structure of the Board, particularly the use of Regional Directors; and

"(5) such additional areas as the Comptroller General determines deserve or require evaluation.

"(d) The report on the second audit performed under subsection (a) after the date of enactment of this subsection shall be submitted on or before May 15, 1988.".

SEC. 5. CONFORMING AMENDMENT.

Section 2 of Public Law 98-33 (2 U.S.C. 803, note) is repealed.

The SPEAKER pro tempore. Is a second demanded?

Mr. BARTLETT. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Montana [Mr. WILLIAMS] will be recognized for 20 minutes and the gentleman from Texas [Mr. BARTLETT] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Montana [Mr. WILLIAMS].

Mr. WILLIAMS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, today I bring before the House H.R. 3447, the Congressional Award Amendments of 1985.

This bill was considered by the House Committee on Education and Labor and approved, as amended, on October 23.

On November 16, 1979, the Congressional Awards Act was signed into law. The act establishes the Congressional Award Program under which young people, those between the ages of 14 and 23, become eligible for a bronze, silver, or gold congressional medal after successfully completing requirements in such areas as public service, physical development, personal development, or demonstrated fitness at expeditions.

The program is established and administered by a Congressional Award Board. The board is not an agency or instrumentality of the Federal Government. No Federal funds are appropriated to the board under the act for administering the program.

The goal of the program is to encourage in young people a sense of voluntarism, citizenship, and leadership by giving of themselves to help their community and to reinforce development of their personal and work skills.

The positive qualities that stem from physical fitness or expedition activity are fully recognized.

This legislation before us extends the Congressional Award Program for 3 additional years. The act is due to expire on November 16, 1985.

The act before us improves the management and administration of the program and increases congressional oversight over the program.

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Mr. Speaker, I reserve the balance of my time.

Mr. BARTLETT. Mr. Speaker, I yield myself such time as I may consume.

Mr. BARTLETT. Mr. Speaker, I rise in support of H.R. 3447, the Congressional Award Amendments of 1985.

The Congressional Award Amendments of 1985 represents a solid piece of legislation for a well-intended program that has experienced what most observers consider to be serious management problems in recent years. The Congressional Award Program seeks to encourage young people who provide services to their community and exhibit a dedication to the merits of personal development and physical fitness. The program is financed solely through funds raised in the private sector with Congress allowing its two nationally recognized symbols of government—the American eagle and the Capitol dome to be used on the award and in select publications and advertisements.

The young people who have received bronze, silver, or gold Congressional Awards have exhibited personal qualities that we can all be proud of. Allowing the limited use of the congressional imprimatur toward their recognition is worthwhile.

The bill we are considering, H.R. 3447, improves the Congressional Award Program in a number of key areas. In the course of the Select Education Subcommittee's hearings on the program, it became evident that the program's management practices were seriously wanting. H.R. 3447 addresses these deficiencies directly: It requires that the bylaws and other regulations of the Board contain language to prevent a conflict of interest or the appearance of such conflict by employees or board members and requires that the bylaws include appropriate fiscal control, fund accountability, and operating principles to ensure that the prohibitions against deficit spending in the act are satisfied. The need for this latter provision stems from the fact that at the end of the calendar

years 1983 and 1984, the program, in violation of the act, was operating at budget deficits of approximately $236,000 and $114,000 respectively.

A program that serves the useful purpose of the Congressional Award Program should be protected from the risk associated with deficit spending.

I am confident that the amendments made to the Congressional Award Program will improve its management practices significantly and contribute to its very worthwhile purpose. Those in the private sector who contribute to the program deserve a commitment to proper fiscal accountability by those who administer it.

Mr. Speaker, I reserve the balance of my time.

Mr. WILLIAMS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I appreciate the assistance in this legislation from the gentleman from Texas, the ranking minority member of our Select Education Subcommittee. I want to recognize his statement that the Congressional Award Program has had some management difficulties in the past, and I want to tell my colleagues that this legislation increases congressional oversight of the Congressional Award Program. It does it in three primary ways. It adds four Members of Congress to the executive board of the program; it requires at least one meeting annually here in the District of Columbia; and it requires two General Accounting Office studies during this authorization period of the activities of the Congressional Award Program.

We do not expect that there will be any illegal activities, nor have we found any in the past; but inasmuch as this program bears the name of the public's body, the House of Representatives, we simply want to be sure that the management of the program is conducted in the highest capacity.

I also want to remind my colleague, the gentleman from Texas, that the act authorizes the board to permit donors to use only the name of the board or the name "Congressional Award Program" in advertising. It does not permit the Congressional Award Program to use the congressional symbol or seal in advertising by the donors.

Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

Mr. BARTLETT. Mr. Speaker, I yield such time as he may consume to the ranking minority member of the Committee on Education and Labor, the gentleman from Vermont [Mr. JEFFORDS].

Mr. JEFFORDS. Mr. Speaker, the Congressional Award Program represents a partnership between the private sector and Congress toward the goal of recognizing young Americans who exhibit qualities of leadership, community service, and a dedication to physical fitness. Funded solely by privately raised funds, the program awards medals to young people between the ages of 14 and 23 in those congressional districts which have operating awards councils. Currently these councils exist in select districts in California, Florida, Illinois, Minnesota, Missouri, New Jersey, Ohio, Texas, Virginia, West Virginia, and Wyoming.

First authorized in 1979, the program presented a total of 255 awards in 1984 and 261 medals have been approved for 1985. The young people who have received these awards have demonstrated a commitment to their community which exemplifies qualities that we all can be proud of. I am certain that many of these award winners will go on to become tomorrow's local, State, and National leaders.

H.R. 3447 supports and improves the Congressional Award Program. It has the bipartisan support of the Education and Labor Committee and deservedly so. I congratulate the chairman and ranking member of the Subcommittee on Select Education for this fine piece of legislation.

Mr. BARTLETT. Mr. Speaker, I yield 2 minutes to the distinguished gentleman from Florida [Mr. LEWIS].

Mr. LEWIS of Florida. Mr. Speaker, I rise in support of H.R. 3447, which extends the Congressional Awards Program through 1988.

The Congressional Awards Council, which my 12th Congressional District initiated in February, held final ceremonies earlier this month.

I was pleased that my district had the most award winners of any first-time congressional award district in the Nation.

Of the 44 medal winners of my area, two were gold medal winners. In addition, each of the nine counties in my district had representatives on the Congressional Awards Council.

Each of these business and community leaders worked diligently to ensure both the success and vitality of this program, which is essential in reinforcing young people for positive deeds.

I thank the gentleman from Montana for bringing this legislation to the floor, I urge its adoption, and I thank the gentleman for yielding to me to express my viewpoint on this great program.

I think it is time that we started showing the positive aspects of our youth rather than the negative. There are more positive aspects out there than there are negative. I certainly hope that we can continue this program throughout and that it broadens throughout this great country, because these young people should be recognized for their services to the community.

Mr. BARTLETT. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise to further commend the leadership of the chairman of the subcommittee, the gentleman from Montana [Mr. WILLIAMS], in ensuring that this legislation and these Congressional Award Act amendments would provide for adequate oversight by the Congress in strict accountability of the funds that are used in this program entitled the "Congressional Award Amendments of 1985." It is true that neither the eagle nor the dome can be used in advertising, but nevertheless the eagle and the dome are included in the logo of the Congressional Award Act, and therefore there is at least the imprimatur.

Mr. Speaker, I would note that what the subcommittee has done under the very able leadership of the subcommittee chairman is to focus on correcting the accountability and the management deficiencies of the congressional award management, while at the same time continuing the real purpose of the act, which is to encourage and increase voluntarism among our young people by rewarding and recognizing that voluntarism. This is what makes this generation of Americans I think one of the most exciting generations of Americans ever.

It seems to me that those words were summed up for me in a letter I received, which I have quoted on the House floor before, from two young people who recently became Americans. They are Vietnamese-Americans. They came to my office and we had a little ceremony when they received their citizenship. These two young Americans live in Dallas, in my district, and they received their citizenship almost 5 years to the day after they arrived. They had been in Vietnam long enough to see the Communist takeover and see the other side, and upon arriving here they immediately began working for their citizenship.

One of the young men, a 14-year-old Vietnamese American, and proud of being both, sat down and wrote a letter on what his citizenship meant to him, and in doing so he talked a good bit about volunteerism and service to his country. Maybe he reminded some of us older people, some of us who are older and who have lived in America all our lives, of what we too often take for granted.

This young man wrote the words:

United States citizens are fortunate to be allowed to express their opinions freely. This is a privilege few nations have. Americans also have the freedom of movement. They can go wherever they want, inside or outside the country. Fair treatment is something that not many nations enforce. America's legal system ensures justice. This country has a democratic government which allows—

I stop on that word "allows," and I will come back to it, because he did—which allows every citizen to take part in controlling the government. America is truly a government of the people, by the people and for the people.

Mr. Speaker, I would come back to the word "allows" us to participate in the Government because this young Vietnamese American captured the essence of youthful volunteerism of this generation when he modified his word "allows" in his postscript. He said:

P.S. Congressman, I will do everything I can for my country.

The Congressional Award Act is one of those organizations through which we have the ability to recognize young people who will do and are doing everything they can for their country.

Mr. KINDNESS. I urge my colleagues' support for H.R. 3447, the Congressional Award Amendments, to reauthorize a program which has been important in recognizing the hard work, dedication, and achievement of young Americans.

Perhaps I could best summarize that importance by quoting the letter I received from a parent of one of the first awardees in my home State of Ohio. He wrote, following the ceremony, that those "who stood to be honored were not just your ordinary teenagers. These young men and women are the doers in their communities, the ones who put others before themselves, the leaders in their schools and the ones who exemplify all the things that are good about our youth."

These young people are not "ordinary" because by their action they have become something more. One of the greatest values of the problem is that it recognizes not just those youth who always are out front and who always will "shine" because of their talents and circumstances. The Congressional Award Program offers opportunities for those quiet, behind the scenes, hard-working young people to be acknowledged and commended for their contributions.

As an example of this latter group, we experienced in our Ohio awards program this year the presentation of a silver award to a young lady who was the first person in her family ever to complete high school. This probably was the only visible outside recognition this young lady ever received. The looks of pride on the faces of her family were incredible.

Our awards council has done an outstanding job. The members represent a variety of backgrounds, interests, and activities, but when they sit down to consider the direction of the program or the application of a young person their differences vanish as they pull together for one purpose—recognition of the accomplishments of an individual.

Our State officials in Ohio have been very supportive of the program, as well. Our awards ceremony was held in the State senate chamber in Columbus, at which each awardee was presented an additional certificate of commendation from each house of the State legislature.

Each of us involved in this program has experienced a tremendous sense of accomplishment and pride in what these fine young people have done. They have made themselves, their peers, their adult leaders and their communities proud of the individual's capacity to face and meet with success the challenges before us. And they inspire each of us to follow their example. That is why this program is such a success.

Mr. MOLLOHAN. Mr. Speaker, it is with great pleasure that I lend my support to H.R. 3447, the Congressional Award Act, which would reauthorize the Congressional Award Program which I sponsor in the First Congressional District of West Virginia.

I commend Mr. WILLIAMS, the distinguished chairman of the House Education and Labor Subcommittee on Select Education, for his guidance in extending this positive program for 3 additional years and for his timely action in bringing this measure to the House floor for consideration today.

Since my involvement with the Congressional Award Program, I have had the extreme pleasure to recognize 44 young people in West Virginia for their voluntary public service, personal development and physical fitness/expeditions achievements. In all, I have presented 20 bronze, 16 silver and 8 gold medals to deserving youth. There are many other young people now working toward their medal requirements and, with the enactment of H.R. 3447, I will have the opportunity to work with these and other young people on their goals and reward them for their accomplishments.

There are few programs that bring together a Congressman and his constituents in a bipartisan atmosphere for such a worthy cause. Through the Congressional Award Program in my district, I have had the opportunity to establish relationships with the members of the First District, West Virginia, Congressional Award Council, county coodinators in each of my 13 counties, county committee members, as well as young people and their parents who choose to participate in the Congressional Award Program. This program brings together young and old from all walks of life for a common positive theme: volunteering.

I encourage my colleagues to support H.R. 3447 and to become familiar with the Congressional Award Program so that you may sponsor it in your district, if you are not already a sponsor.

Mr. HOWARD. Mr. Speaker, I rise in support of the Congressional Awards Act amendments which reauthorize and make some changes in the Congressional Award Act which I sponsored in 1979.

Many of us with Congressional Award Programs operating in our districts have had the opportunity over the last few years to observe the program in action. There is no doubt in my mind that the Congressional Award has had great success in meeting the goals Congress set for it. Thousands of young people around the country have gained immeasurably from their association with the program. And we as a nation will be better off for having recognized and encouraged achievement and voluntary service among our younger generation.

The idea for the Congressional Award was first brought to me in the late 1960's by a constituent, Dr. Frank Arlinghaus of Rumson, NJ. As a Columbia University student at that time, Dr. Arlinghaus was very concerned that young people were becoming increasingly alienated from their government. He felt that this was due in part to the failure of Government and adult society to pay attention to the concerns of young Americans and to properly recognize their unique contributions.

It took a number of years for us to generate the kind of national support for the program necessary to secure its enactment, but in 1979, our bill was signed into law by President Carter.

The first Congressional Award Program on a congressional district level was established in my district in 1983. Since then, I am proud to say, we have held four award ceremonies honoring some 116 young people who have earned bronze, silver, and gold medals.

To truly appreciate the program, it is necessary to attend one of these award ceremonies. It is an inspiring and oftentimes emotional experience to see these outstanding young people honored for their personal achievements and for their volunteer work with the poor, elderly, or handicapped. Occasionally, the medal recipients are handicapped themselves and the program has provided them with the kind of incentive necessary to accomplish extraordinary tasks. Always, recognition is bestowed during these ceremonies that would have been overlooked if the Congressional Award Program were not in existence.

The Congressional Award has been an outstanding success in my district even though we have had to operate on a very small budget. Our success is due in large part to the enthusiasm of a core group of adult volunteers who give generously of their time to operate the program, raise money and reach out to young people in our local schools and in youth organizations. The community and the news media have also greeted the Congressional Award with great enthusiasm and, most important, young people are participating in the program in large numbers and spreading the word to their peers.

Still, we have recognized in the implementation of this new program the need for some changes in the original authorizing legislation. I support the changes recommended by the Subcommittee on Select Education of the Education and Labor Committee. I believe the amendments will result in an even closer relationship between the Congressional Award and the Congress and will encourage further expansion of the program.

I also want to congratulate the subcommittee chairman, the gentleman from Montana [Mr. WILLIAMS] for the fine job he has done with this legislation. Under his leadership, the Congressional Award promises to reach its fullest potential as a bridge between young people and their government.

Mr. BARTLETT. Mr. Speaker, I yield back the balance of my time.

GENERAL LEAVE

Mr. WILLIAMS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and to include extraneous material, on the bill under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Montana?

There was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Montana [Mr. WILLIAMS] that the House suspend the rules and pass the bill, H.R. 3447, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

TENTH ANNIVERSARY COMMEMORATION OF EDUCATION FOR ALL HANDICAPPED CHILDREN ACT

Mr. WILLIAMS. Mr. Speaker, I move to suspend the rules and agree to the concurrent resolution (H. Con. Res. 201) to commemorate the accomplishments of Public Law 94-142, the Education for All Handicapped Children Act, on the 10th anniversary of its enactment, as amended.

The Clerk read as follows:

H. CON. RES. 201

Whereas part B of the Education of the Handicapped Act, commonly known as Public Law 94-142 (the Education for All Handicapped Children Act), was signed into law 10 years ago on November 29, 1975;

Whereas Public Law 94-142 established as policy for the United States of America the principle that all children, regardless of disabling condition, have the right to a free, appropriate public education in the least restrictive setting;

Whereas Public Law 94-142 currently serves over 4,000,000 handicapped children;

Whereas Public Law 94-142 ensures the full partnership between parents of children with disabilities and education professionals in design and implementation of the educational services to be provided handicapped children;

Whereas Public Law 94-142 has greatly enriched the classrooms of the Nation by allowing the potential of children with disabilities to be developed, together with the potential of nondisabled youngsters;

Whereas Public Law 94-142 has greatly enriched America's society as a whole by providing the means for disabled youngsters to contribute to the social and economic progress of the United States; and

Whereas Public Law 94-142 has succeeded even beyond the expectations of congressional supporters in marshaling the resources of the Nation to fulfill the promise of participation in society of disabled youngsters: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That the Congress—

(1) recognizes the 10th anniversary of enactment of Public Law 94-142 and the successful implementation of that law;

(2) acknowledges the many and varied contributions by disabled youngsters, parents, teachers, and administrators; and

(3) reaffirms its support for Public Law 94-142 and the primary goal of Public Law 94-142 that all children, regardless of disabling condition, have the right to a free, appropriate public education in the least restrictive setting.

The SPEAKER pro tempore. Is a second demanded?

Mr. BARTLETT. Mr. Speaker, I demand a second.

The SPEAKER pro tempore. Without objection, a second will be considered as ordered.

There was no objection.

The SPEAKER pro tempore. The gentleman from Montana [Mr. WILLIAMS] will be recognized for 20 minutes, and the gentleman from Texas [Mr. BARTLETT] will be recognized for 20 minutes.

The Chair recognizes the gentleman from Montana [Mr. WILLIAMS].

Mr. WILLIAMS. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, this House Concurrent Resolution 201 commemorates the accomplishments of Public Law 94-142, the Education for All Handicapped Children Act, on this, the 10th anniversary of the enactment of that vital piece of legislation.

On November 29, 1975, with the signing into law of Public Law 94-142, the guarantee of a free appropriate education for all handicapped children in the least restrictive setting became the law of the land.

Public Law 94-142 is a landmark piece of legislation. It ensures that all handicapped children, regardless of the nature of severity of their handicapping condition, must be appropriately educated.

The determination of what a child's special education needs are and what services will be provided must be based on the individual needs of that child and not on the services then available in the school district.

Furthermore, it ensures the full partnership between parents of children with disabilities and education professionals in the design and implementation of the education services to be provided for the child. That partnership idea now firmly established is working well.

□ 1355

The impact of this legislation is impressive. Since the 1976-77 school year, there has been an increase of 18 percent in the number of children served. During the 1983-84 school year, more than 4.3 million handicapped children were served under the program. There has also been a 19 percent increase in the number of preschool programs for handicapped children.

We are currently doing a better job of identifying and serving students. Eleven percent of all school-aged students in the 1983-84 school year were diagnosed as being handicapped compared to only 8 percent in 1977-78, the first year Public Law 94-142 became effective. There has also been an increased emphasis on serving the more severely disabled students in the school system.

Growth in serving handicapped children has been accompanied by an even greater increase in the total number of teachers and staff providing that education. There has been a 34-percent increase in the number of teachers and a 48-percent increase in the number of other school staff.

Equally impressive is the impact of this legislation on attitudes. Handicapped children are learning self-respect and working to the maximum of their potential. Parent's expectations have expanded. Administrators and teachers are treating handicapped children as individuals with unique strengths, weaknesses, and needs. Handicapped children are befriending nonhandicapped peers.

We can all be proud of what has been accomplished over the past 10 years. It is now time to reaffirm our commitment to this program and to its goals.

At the same time, we must continue our efforts to meet the challenges that lie ahead. One of these challenges is the implementation of the mandate in the legislation that handicapped children be educated in the least restrictive environment. Last week, a witness testifying before the Subcommittee on Select Education, which I chair, expressed the challenge this way:

Ten years after the passage of Public Law 94-142, school systems still construct numerous segregated special education facilities—fine new buildings where only students with severe disabilities may be found. A decade after Public Law 94-142, school systems continue to locate teenagers with disabilities in separate wings of elementary schools. Ten years after the law was passed excellent vocational/technical schools exclude students with disabilities from participating in the vocational programs. Today, the least restrictive environment is still far from being a reality for many disabled students.

I urge my colleagues to support House Concurrent Resolution 201 commemorating the 10th anniversary of the enactment of Public Law 94-142, the Education for All Handicapped Children Act.

Mr. GIBBONS. Mr. Speaker, will the gentleman yield?

Mr. WILLIAMS. I yield to the gentleman from Florida.

PERMISSION FOR COMMITTEE ON WAYS AND MEANS TO FILE REPORT ON H.R. 2817, SUPERFUND AMENDMENTS OF 1985

Mr. GIBBONS. Mr. Speaker, I ask unanimous consent that the Committee on Ways and Means have until midnight tonight to file the report on H.R. 2817, the Superfund Amendments of 1985.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Florida.

There was no objection.

Mr. WILLIAMS. Mr. Speaker, I reserve the balance of my time.

Mr. BARTLETT. Mr. Speaker, I yield myself such time as I may consume.

Mr. BARTLETT. Mr. Speaker, I am particularly pleased to voice my support of House Concurrent Resolution 201 commemorating the 10th anniversary of Public Law 94-142, the Education for All Handicapped Children Act. For the past 3 years I have served as the ranking Republican member of the Subcommittee on Select Education with jurisdiction over the act. In that time I have reviewed first hand the workings of the program that has turned night into day for millions of American handicapped students and their families. Prior to 1975, handicapped students could never make the primary assumption that nonhandicapped students have made, namely, that the public school system would provide them with free and appropriate education. Today, due to the existence of Public Law 94-142, handicapped students are entitled to a free and appropriate education. To the maximum extent possible, these handicapped students are schooled alongside their nonhandicapped peers.

Fortunately, it seems like another era when handicapped children were routinely denied educational services or segregated into substantial facilities. It also seems long ago that our education curriculums for persons with handicaps focused on nonfunctional, repetitive tasks intended to fill time and occupy the handicapped student rather than provide them with skills leading to independence and dignity. Today, handicapped and nonhandicapped students are educated together and not only learn from classroom instruction, but also from each other. In many ways, the most profound impact of Public Law 94-142 may well be the education that nonhandicapped students and staff learn about handicapped individuals and the challenges that they face. These nonhandicapped individuals are learning about the range of human conditions and the attitudes they manifest.

Public Law 94-142 is essentially a process for determining what constitutes an appropriate education for a handicapped student. The innovation that Public Law 94-142 brings to our educational system rests on two characteristics of that process: First, educational services are delivered to a handicapped student on an individualized basis so that every educational program provided to a student with handicaps is tailored specifically to that student's unique educational needs; and second, parents of handicapped students participate in the education decisionmaking process as full partners along with other members of a multidisciplinary educational team. The benefits of this increased decisionmaking authority on the part of parents has meant that skills taught at school are more likely to relate directly to a handicapped student's total environment.

Public Law 94-142's 10 years have been years of partnership between parents, educators, and administrators. As in all innovative endeavors, the program has not been without controversy, but that should not surprise anyone who is even the least bit familiar with the complexities of providing an appropriate education to a student with handicaps.

Public Law 94-142 has meant greater independence and opportunity for students whose handicaps range from severe to mild. It has, in the process, broadened our definition of education. We have been taught to appreciate the fact that all persons, regardless of their physical condition or mental capacities, are educable, that is capable of experiencing the change in behavior that we commonly call learning. Because of Public Law 94-142 we understand that learning to feed oneself, learning a complex vocational assembly, or learning to master a word processing system are essentially similar tasks. Each of these skills require instruction and the opportunity to learn in order to be mastered. Public Law 94-142 has given handicapped students that opportunity and thousands of dedicated special educators have provided the appropriate instruction.

I think it is only fitting at this time to recognize the Members of Congress who were instrumental in the development passage of Public Law 94-142. Public Law 94-142 has continuously generated bipartisan support which is reflected in its legislative origins. In 1975 when this act was passed, key members of the Subcommittee on Select Education as well as members of the Education and Labor Committee who played critical roles included: John Brademus and Albert Quie, the chairman and ranking member of the subcommittee, Representatives JAMES JEFFORDS, GEORGE MILLER, LARRY PRESSLER, Frank Thompson, BILL FORD, Phil Burton, PAUL SIMON, Edward Beard, and the late chairman of the Education and Labor Committee, Carl Perkins. On a day when the House is commemorating Public Law 94-142, these Members deserve special mention.

Mr. Speaker, Public Law 94-142 is truly a landmark for millions of persons with handicaps and their families. We should all be proud of its accomplishments and its promise.

Mr. Speaker, I reserve the balance of my time.

Mr. WILLIAMS. Mr. Speaker, I have no additional requests for time, and I yield back the balance of my time.

Mr. BARTLETT. Mr. Speaker, I yield such time as he may consume to the gentleman from Vermont [Mr. JEFFORDS].

□ 1405

Mr. JEFFORDS. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I am particularly pleased to note my support for House Concurrent Resolution 201 commemorating Public Law 94-142, the Education of All Handicapped Children Act. I was fortunate enough, as a member of the Education and Labor Committee, to have participated in the consideration of the original legislation which was to become Public Law 94-142. Our efforts were to assure that handicapped children would receive a free, appropriate education in our public school systems.

Today over 4 million handicapped students receive a special education designed to meet their unique educational needs. In Vermont, State funding for special education increased by 100 percent following the enactment of Public Law 94-142. Vermont now receives $1,928,334 in Federal support for its 7,400 special education students. The unique service delivery system which has been developed in Vermont has been replicated in other small rural States to the benefit of handicapped students and their families.

Public Law 94-142 has led to increased preschool services and a recognition that handicapped adults, given the proper training in the public school system, are capable of being competitively employed. We have developed a pool of special educators whose dedication and technical expertise is unmatched.

Public Law 94-142 has transformed the educational services that we provide to students with handicaps. It has accomplished what this body hopes all of its initiatives can accomplish—it has significantly improved the lives of millions of American children and their families. There is no greater testimony to a statute than this.

In my 10 years in this body I have not been involved in any legislation which has given more self-satisfaction nor, in my mind, benefited more people than this.

Mr. DYMALLY. Mr. Speaker, on November 29, 1985, a landmark piece of social legislation was signed into law. Public Law 94-142, known as the Education for All Handicapped Children Act, has had a significant, beneficial impact on the way our Nation's schools educate the handicapped. Public Law 94-142 laid out fundamental principles that have since guided educational programs for the handicapped.

The law now requires that children with handicaps be assessed as to the nature of their handicaps and that special educational services be provided that would allow each such child to be educated in a nonsegregated, free, and appropriate manner. A key feature of the law is that determination of the handicapped child's needs must be based on the actual needs of the child and not on the availability of services in the school at the time the evaluation is made.

There is no doubt that the legislation caused a sometimes difficult reorientation in focus within schools across our Nation. That is, the law caused school officials to focus on the child's needs rather than on current institutional services availability. Difficult as that refocusing may have been in certain instances, it was a necessary refocusing. It was the right refocusing.

The most tangible indication of the good this law has worked is the fact that during the 1983-84 school year, 4.3 million handicapped children were able to receive a free and appropriate public education. The children were obvious winners here. But the whole of our society is a winner as well. The revolution in educational philosophy engendered by Public Law 94-142 has meant that millions of students have been afforded the opportunity to become productive members of our society. These are people who without this act would have been shunted to the back roads of education.

Moreover, I believe Public Law 94-142 has helped to bring about a fundamental change in public attitudes toward the handicapped. The positive public attitude that has occurred in part because of the act has shown us how debilitating had been the old isolationist attitudes toward the handicapped. We know in retrospect that in some cases public attitude was more of an obstacle to full participation of the handicapped in our society than was the physical handicap itself. The gradual removal of that obstacle has been a boon to the handicapped, certainly, but it has been an even greater blessing to the country.

Today, we are considering House Concurrent Resolution 201 to commemorate the 10th anniversary of Public Law 94-142. I wholeheartedly support the law and the resolution commemorating its passage. Public Law 94-142 is one of the most enlightened laws, the Congress has ever brought to enactment. It is richly deserving of our commemoration.

Mr. MARTINEZ. Mr. Speaker, I rise today in support of House Concurrent Resolution 201, and I would like to take this opportunity to commend my colleagues on the Education and Labor Committee, especially the gentleman from Montana, not only for their desire to commemorate the 10th anniversary of Public Law 94-142, but also for their hard work and complete dedication to the education of all handicapped children.

It is indeed an honor to be a part of the proceeding before this body today. Ten years ago, on November 29, 1975, this law was signed by President Ford. It established policy calling for a free and appropriate education for all children regardless of their disability. Today, this law serves 4 million children across this Nation and provides $1 billion in Federal aid to assist States in their efforts to comply.

Over these many years our society has come a long way in our efforts to make all levels of education available to the handicapped in the most integrated and least restrictive way possible. Studies show that the number of handicapped students on college campuses has grown from 2.7 percent in 1978 to 7.3 percent in 1984. Presently, 23 States have mandated legislation for the provision of educational services to handicapped children under the age of 5. These are but a few statistics that are indicative of our Nations continued and growing commitment to handicapped education.

Mr. Speaker, thank you for this time and again I applaud my colleagues for their efforts and interest on behalf of handicapped students.

Mr. ECKART of Ohio. Mr. Speaker, this week we are commemorating the 10th anniversary of the Education of the Handicapped Act, more commonly known as Public Law 94-142. The enactment of this important legislation has afforded millions of handicapped children in this country the chance to receive an education appropriate to their needs and abilities. Today this law, which serves 4 million disabled children, has proven extremely successful as many of them can contribute to our society rather than rely on the Government for their well-being.

The foundation of this Nation, and its laws, has been built on the belief that each man and woman should be allowed freedom and independence. Public Law 94-142 provides these to a significant segment of our population who, prior to the law's enactment a mere decade ago, found it difficult to receive a proper education. It is this education which allows these citizens to gain the confidence and knowledge to become active participants in our society.

This law, by requiring that the local education agencies, schools, parents, and children all work together to develop an individualized education program, ensures that the unique needs of each particular student will be met. In addition, the law, through mainstreaming, allows each handicapped child to receive an education in the least restrictive environment. This measure provides the child with a far greater chance to become part of our society than if they were educated in the confines of an institution.

Public Law 94-142 confirmed Congress' recognition that children who have special needs can become active members of our society if their needs are properly addressed during their school years. In a study released by the Select Committee on Children, Youth, and Families, the chairman and ranking minority member singled out Public Law 94-142 as one of the eight most effective children's programs passed by the Congress. As part of its findings, the study evaluated a survey, conducted by the Colorado Department of Education, which indicated that of the high school graduates who participated in special education programs, nearly 70 percent were working at least part time and making a significant contribution to their own support. It is findings like these which should spur both Congress and the administration into greater action to support and fund these programs.

The education of our children has been of tremendous importance to the Congress. In light of the deficit crisis, when we are all looking to programs which must be cut, I sincerely hope that programs such as providing education for the handicapped will be preserved. I firmly believe that each child, no matter what the individual needs may be, deserves the chance to participate in our society. It is laws such as Public Law 94-142 which provide them with such an opportunity and for that reason, I am pleased to lend my wholehearted support to this law.

Mr. MILLER of California. Mr. Speaker, I rise in strong support of this resolution honoring the 10th anniversary of Public Law 94-142, the Education for All Handicapped Children's Act.

I am proud to be an original cosponsor of this commemorative resolution, as I was proud to coauthor the original bill in 1975. In fact, this was one of the very first bills which I helped write when I entered Congress a decade ago.

The district which I am honored to represent has been in the vanguard of providing educational and other services to handicapped youngsters. For me, there is a very personal association, because my father, George Miller, Jr., was a vigorous proponent for the disabled during his years in the California State Legislature. In fact, there are two schools for the disabled in my district which are named after my father because of his years of commitment.

The parents of disabled youngsters in my district have long been extremely committed to the education of their children. While I cannot name them all, I want to give special recognition to several who have been most active, including: Pam Steneberg, Diane Lipton, and Jeanne King of Parents Advocates for Special Education; Madelyn Sitrin and Sunny Grammont of the Developmental Disabilities Council; Beverly Casebeer, Jean Styris of Crunch; Karen Baker of the Mount Diablo schools; Joanna Cooper of Pase and George Miller, West; La Verne Bell; Betty Hodge of Mount Diablo schools; and Judy Miller of the Harmon Parent Group.

I also want to acknowledge the outstanding contributions of some of our local school administrators, including: Pete

Gonos, the director of the special education local plan committee; Joe Ovick, the director of special education for the county office of education; Ken Butler, the director of special education for the Mount Diablo Unified School District; and Steve Cedarborg, the director of special education for the Richmond USD. These individuals, together with parents and teachers of the handicapped, have made enormous contributions to these programs, and educated me about the need for even better programs for the disabled.

It is also a special honor, on this 10th anniversary of Public Law 94-142, that a devoted educator from Contra Costa County, Michael Grimes, currently serves as president of the Council for Exceptional Children.

When we wrote this landmark law 10 years ago, we believed that all children deserve to be educated in an appropriate setting, according to their special needs, regardless of their handicap or disability.

We believed then, as we now know, that this approach is more cost-effective and more conducive to family stability than excluding children from school, consigning them to institutions, or misclassifying them as retarded.

We believed then, as we now know that parental participation in the education of disabled children is absolutely essential and that every child has a right to have their particular needs evaluated and addressed by their school.

The Select Committee on Children, Youth and Families, which I am honored to Chair, has heard testimony on the enormous impact of this outstanding program. Families have repeatedly testified that "but for this law," they would have no way to bring the fruits of education, and the possibility of participation in mainstream American life, to their children.

So today, we can say the Education for All Handicapped Act is a success. It is now a right. But we have still failed to meet one of the key mandates of the law. The title promises education to all handicapped children.

And yet, we in Congress have failed repeatedly to provide adequate support so that more disabled youngsters can enjoy an appropriate education. Today, 10 years after the commitment was made, we are still shutting the schoolhouse doors to millions of handicapped youngsters throughout this Nation who are not seeking charity or pity, but the basic right to an education.

Instead of just commemorative speeches on this anniversary of the passage of Public Law 94-142, I hope Members of this House will commit themselves to more than making a commemorative speech. I hope they will commit themselves to the law which we are honoring.

I would hope that parents and handicapped youngsters, administrators and teachers, throughout this country, will ask Members of Congress not whether they voted for the commemorative resolution honoring Public Law 94-142, but whether they voted for the legislation providing adequate support for this law so that the barriers are broken and all handicapped children have the rights this law guaranteed them a decade ago.

Mr. BARTLETT. Mr. Speaker, I have no further requests for time, and I yield back the balance of my time.

GENERAL LEAVE

Mr. WILLIAMS. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks, and include extraneous material, on the concurrent resolution presently under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Montana?

There was no objection.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Montana [Mr. WILLIAMS] that the House suspend the rules and agree to the concurrent resolution, House Concurrent Resolution 201, as amended.

The question was taken.

Mr. JEFFORDS. Mr. Speaker, on that, I demand the yeas and nays.

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to the provisions of clause 5, rule I, and the Chair's prior announcement, further proceedings on this motion will be postponed.

PERSONAL EXPLANATION

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Florida [Mr. NELSON] is recognized for 5 minutes.

Mr. NELSON of Florida. Mr. Speaker, due to official business, I was unable to be present and voting for rollcall vote No. 371 on October 24. Had I been present, I would have voted "nay" on the Fazio amendment to the Omnibus Budget Reconciliation Act.

SUPPORT LEGISLATION TO ALLOW YOUTH EMPLOYMENT OPPORTUNITY WAGE

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Mississippi [Mr. MONTGOMERY] is recognized for 5 minutes.

Mr. MONTGOMERY. Mr. Speaker, I am cosponsoring legislation introduced by my fellow colleague from Mississippi, Representative TRENT LOTT, which would allow an employer to pay a youth employment opportunity wages during the summer months. The time has come for action on this type of legislation. Although we have experienced sustained economic growth in the last few years, the unemployment rate among the youth of this Nation remains high. This legislation would allow employers to provide employment opportunities for youth during the summer, give the youth of this Nation a chance to earn some money, and allow our young people a chance to gain experience and skills for future work.

The legislation has broad-based support among a large number of organizations and interest groups—the U.S. Chamber of Commerce, the American G.I. Forum, the Business Roundtable, the National Conference of Black Mayors, the National Federation of Independent Businesses, and the list goes on and on.

Provisions in the legislation address the main concerns raised over allowing a subminimum wage for youths. The bill provides safeguards disallowing the displacement of adult workers by youth. First, the proposal is limited to the summertime; and second, the proposal contains an explicit prohibition against discharging, demoting, or transferring current employees.

Studies have shown that enactment of this proposal would create about 400,000 new summer jobs at the Federal level for youth, and this figure could increase to 640,000 jobs if those States with minimum wage laws adopt the proposal.

The time has come to see some action on this legislation which can help improve the futures of our Nation's young people. I hope all my colleagues will consider the merits of this proposal and join me in supporting this much-needed legislation.

MY ADVICE TO THE PRIVILEGED ORDERS

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Texas [Mr. GONZALEZ] is recognized for 60 minutes.

Mr. GONZALEZ. Mr. Speaker, there is a pattern of activity throughout the country that has aroused my outrage and anger. It seems that in more than one instance during the last year, groups of junior high school and high school girls in Texas and other places were strip-searched because a sum of money or some article—in this case, $1.85—was reported missing somewhere.

Now, this action is in reaction to the Reagan administration's victory at the Supreme Court level where it was decided that students are second-class citizens when it comes to fourth amendment rights regarding search and seizure. Last January, the administration argued before the Supreme Court that in order to fight crime and drug abuse in the schools, teachers and administrators should be allowed to search students and their lockers. The Supreme Court agreed and ruled that the schools were proper places for search, although in other circumstances and conditions, it has not so ruled up until now. The Court ruled that the schools' needs were enough to justify search of students, more than anyone else.

The dissenting Justices in this case warned that this lessened the standard of justice for students, and that it

would make it just as easy for school officials to search for violations of a school dress code as to search for contraband such as drugs and guns. How right the dissenting Justices have turned out to be.

What is particularly horrifying to me is that the misapplication of this newly established Supreme Court-approved procedure in Texas is not the first such misapplication. Last March a similar event occurred in Ohio, where 20 seventh-grade girls were strip-searched while a schoolmate's watch was reported as having been lost or stolen. In neither case were the missing funds or items recovered.

School officials have been given a right to search if there are reasonable grounds for believing a wrong has been committed. But what about the reasonableness of the search itself? It might make sense to search lockers and purses for missing items, but is it reasonable to make junior high school girls strip to their bare skin? Surely this is not what the Supreme Court and the Reagan administration intended by their efforts to lessen the constitutional rights of students. But for as long as the Supreme Court has been deciding cases on search and seizure, they were very careful to make sure that no matter how noble the intent, such a thing would not happen as a direct result of their interpretation or misinterpretation in a given case.

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Certainly these are foreseeable events. Any dictator, and we have in America reached a point where with the acquiescence of the American people ostensibly, we have eroded the basic things that we take for granted in the way of personal freedom, freedom from unreasonable search and seizure.

We have at the present moment three so-called intelligence agencies of our country spying through electronic surveillance and other means on American citizens domestically in the United States, contrary to the very purposes for which these intended jurisdictional aspects that these agencies were given at the time that Congress set them up.

The National Security Agency, NSA, we hear a lot about the CIA, we hear a lot about the FBI, but very little of the NSA, and yet it is the most vastly complicated—beyond any kind of oversight by President or Congress—agency of any government on Earth or the globe, including the Communist regimes of Russia and others.

We cry about authoritarian governments, but we have done it to ourselves in this case and we continue to do so, all with the best of intentions.

Of course, we want to catch those dastardly spies, but when they turn out to be actually long-time politically conservative American citizens who pay their taxes, who go to work every day, who do not have any foreign-sounding ethnic names or surnames, and all of a sudden the headlines blaze that they are spies.

Of course, we want to avoid that kind of activity, but in doing so is it necessary that an open society, the only reasonable last remaining bulwark of freedom in the world, should imitate those that it is the last bulwark from? I do not think so, but I think the matter has gone so far that Congress has for so many years looked the other way, it has created out of its legislative laboratory these legal Frankensteins and refuses to look them over.

I can assure you that today, right now, while I am speaking, the National Security Agency is monitoring every single international phone call that comes in to American citizens.

Is this legal? Is this supposed to be done?

Well, it depends on who you ask and who is answering. If you ask the members of the Intelligence Committee of either the House or the Senate, they will tell you they are not supposed to be doing that, but that is not the issue.

The issue is that they are, and they have and they have been doing so illicitly and in fundamental violaton of those things we have taken for granted for so long.

True, we live in an era that has forgotten the more halcyon epoch, when if we went to the airport we did not have to go through a checking point, but we take that for granted, or if you come to the Halls of Congress and you are a visitor and you want to go up to the visitors gallery, you go through the same proceeding.

Our public buildings are teeming with guards, concrete pillars, bunkers, and everything else.

Everybody has forgotten when we were not enured to that kind of existence. It is just that imperceptibly we are getting used to giving away our basic freedoms of a great heritage never before enjoyed in any land, in any clime, or under the sky on this globe, but we are almost imperceptibly taking for granted that we should condone such procedures that I am reporting, perpetrated against our young girls.

What are we to say? Are we to say that we have reached the point where without a murmur, without even a whimper, we lose these precious constitutional rights?

We live in that day and time, though, in which national leaders themselves are foisting a near hysteria and advocating remedies of this moment, but which collapse.

We have seen this happen among the issues that as legislators we have confronted through the years of a more sanguine nature, such as taxation, such as interest rates, and we have reached the point where I think, with sadness, we might ask, have we not for a mess of pottage given up our birthright?

Mr. Speaker, at this point I would like to place into the RECORD a copy of an Associated Press dispatch, dated October 28, concerning the search of junior high school girls at the Cedar Hill, TX, school, and an article by Nat Hentoff in the Washington Post of May 9, 1985.

The material is as follows:

PARENTS OF STRIP-SEARCHED GIRLS WANT TEACHERS FIRED

CEDAR HILL, TX.—The father of a junior high girl who was among 15 students strip searched for a missing $1.85 says the faculty members responsible for the search stole the children's dignity and should be fired.

"What they really did was told our children their pride and dignity wasn't worth $2. It's only worth $1.85," said Bobby Hufstetler.

Some of the parents of the Cedar Hill Middle School girls who were strip searched are enraged by the action and say they plan to ask the school board at its Monday night meeting to fire the physical education teacher and assistant principal involved.

The students were ordered to remove their clothing Thursday when a girl in a seventh-grade physical education class reported $1.85 missing.

"This is a violation of basic human rights," said Hufstetler "I feel like the school owes the girls something besides 'I'm sorry.' She (his daughter) was completely devastated," he said.

But other parents say they still support physical education teacher Janice Ellis and Jeanne Cothran, the assistant principal who authorized the search.

Mrs. Ellis acted out of frustration after several thefts occurred during the year, the parents said, and added that they plan to show support for the teacher at Monday's meeting.

On Friday, Ms. Cothran said the decision to search the students was made in haste and frustration.

"She (Mrs. Ellis) was very frustrated. It was the third day in a row that money was stolen," Ms. Cothran said. "In the back of my mind, I thought it might not be the right thing to do."

At least one girl was asked to strip completely while others were asked to strip down to their undergarments, parents said. Still others were asked to remove their bras. The missing money was not found.

Karen Kershaw, a friend of Mrs. Ellis, said the parents have overracted.

"Naturally to them the girls have been embarrassed, but someone is guilty of theft," Ms. Kershaw said. "She was doing what she though was right. In my feelings, she (Mrs. Ellis) has been treated unfairly and tried and convicted," Kershaw said.

The search was conducted in Mrs. Ellis' office, which has a window looking out into the locker room.

Last week Mrs. Ellis said the parents were "blowing it out of proportion."

"Not one of the parents asked for my story," she said. "They came up here ready for blood."

UP AGAINST THE WALL, SEVENTH GRADERS
(By Nat Hentoff)

Scholastic Action is a magazine that tries to awaken the interest of half a million junior high school students around the country in current events. Teachers have reported that its March 22 issue was particularly successful. One section began:

"Up against the wall."

"Joey stretched his arms and put both hands on the cold, gray lockers. The man felt along Joey's sleeves. Then he felt down his chest and inside the pockets of his jacket.

"Joey is not a criminal. The man frisking him is not a cop. Joey is a high school student. The man who searched him is his history teacher."

It was then explained to the students that they were reading a hypothetical, as they say in the law schools. But, they were told, this kind of classroom search could not happen as a result of a new Supreme Court decision. Said Scholastic Action: "If any school official has good reason to believe you are breaking a school rule, he or she can search your locker, your desk or you."

The section went on with a series of conflicting reactions to the court decision from various parts of the country. The kids reading the magazine were then asked what they thought.

The historic case, New Jersey v. T.L.O., had come down on Jan. 15. A majority of the court decided that students can be searched by school personnel according to a lower standard than adults. Instead of the searchers needing "probable cause" to believe that a search will reveal evidence of wrongdoing, all that is required to search a student in school is "reasonable grounds" to go through his locker or him.

At the time, a former U.S. commissioner of education, Dr. Harold Howe, did not share the general jubilation of teachers and administrators at this cut-rate constitutional standard for school kids. The justices, he said, "have asked school authorities to be reasonable in making searches and have given them a hunting license to decide what is reasonable."

Ten days after the T.L.O. decision, 20 girls, all seventh graders, all under the age of 14, felt the palpable impact of the new Supreme Court ruling. Their lesson in the Constitution as a living document took place after a first-period gym class at Westwood Junior High School, Elyria, Ohio. When the seventh graders came back to their locker room, the physcial education teacher told them a watch and ring belonging to a student were missing. First, the girls' lockers and purses were searched. The missing property was not found.

The assistant principal joined the gathering and informed the seventh graders that their persons were now going to be searched. He warned that if they did not allow female school officials to do the job, the sheriff and his men would be called in.

In the course of the strip-search of the seventh graders, they were commanded to drop their jeans to the floor and turn around as the physical education teacher, the guidance counselor and a clerk-typist visually inspected their entire bodies. A 12-year-old described this lesson in civics: "We had to take off our shirt and then we had to take off our shoes. And then they looked down our bra to see if we had it or not."

No one did have the watch or the ring—anywhere.

On Feb. 8, after due deliberation, Calvin Leader, the Elyria superintendent of schools, issued a formal statement: "The search was conducted in an orderly manner . . . it is my belief that the staff involved made the decision to conduct search activities after reasonable deliberation of the critical issues."

That's what the Supreme Court said was needed in these situations—reasonableness.

With the help of the American Civil Liberties Union of Ohio, 13 of the students are suing Leader, five members of the board of education, the principal, the assistant principal and the three women who conducted the strip search. They want an end to strip-searching of students. Also, each seventh grader is asking for $38,000 in compensatory damages and another $38,000 in punitive damages.

It is the ACLU's contention that whatever the Supreme Court meant by reasonableness in school searches, no reasonable adult would interpret that word to mean a dragnet strip search of seventh graders. After all, the majority of the justices did say that the form of the search cannot be "excessively intrusive in light of the age and sex of the student and the nature of the infraction."

However, the words "excessively" and "intrusive" may mean quite different things to eminently reasonable school officials and judges. During his dissent in *T.L.O.*, Justice William Brennan predicted that these "amorphous" new standards for searching school kids would create increased litigation as well as uncertainty among teachers and administrators. The latter, Brennan said, are going to be "hopelessly adrift" in knowing when to search and how far to go.

The kids will be adrift too. There they are, the future guarantors of freedom in the world—but standing now, legs spread, up against the wall.

ABM TREATY

(Mr. BERMAN asked and was given permission to extend his remarks at this point in the RECORD and to include extraneous matter.)

Mr. BERMAN. Mr. Speaker, I would like to take this opportunity to call to the attention of my colleagues the administration's dangerous reinterpretation of the ABM Treaty. The Foreign Affairs Subcommittee on Arms Control, International Security, and Science held hearings on this subject last week on October 24. From among a number of witnesses that day, the most interesting testimony came from two gentleman who were participants in the original negotiations that culminated in the Anti-Ballistic Missile Treaty: Ambassador Gerard Smith and Mr. John Rhinelander.

Their testimony makes clear the danger of this foolhardy reinterpretation. If the United States continues to treat this broader interpretation as the legally binding version, we will have invited the Soviets to start up a program of development and testing of advanced or "exotic" ABM technologies.

The President maintains that the administration will conduct its SDI program within the bounds of the stricter interpretation of the ABM Treaty. But if the administration continues to support the broader interpretation as the only legally binding one, what incentive is there for the Soviets to refrain from conducting their version of SDI under the broader interpretation?

There is no justification for a reinterpretation after 13 years of mutual understanding and adherence to the ABM Treaty. In those 13 years, we have had four separate American and Soviet administrations and neither side has ever suggested that advanced technologies were not clearly banned by the treaty.

All of the original ABM Treaty negotiators, including Ambassador Paul Nitze, have consistently made clear that their understanding of the treaty was that it banned the development and testing of future ABM technologies. Of course, as a loyal member of this administration, Ambassador Nitze has toed the line on accepting the new interpretation. But only a few months ago, Ambassador Nitze said, in a speech before the National Press Club, that the ABM Treaty "prohibits the deployment of ABM systems in space or on the Earth, except for precisely limited, fixed, land-based systems." In addition, he went on to say that "all systems—whether nuclear or otherwise—which have a capability to counter strategic ballistic missiles or their warheads at any point in their trajectory, are subject to the ABM Treaty."

I think my colleagues will find the testimony of two of the original participants of the ABM Treaty especially illuminating on this issue. I commend to my colleagues the statements, before the Arms Control Subcommittee, of Mr. John Rhinelander, former legal adviser to the ABM Treaty Negotiations, responsible for the drafting of the treaty language, and Ambassador Gerard Smith, former Chief of the U.S. Delegation to the ABM Treaty negotiations. Both of these gentleman gave statements before the Arms Control Subcommittee which make clear how very detrimental this new interpretation will be to our national security. In addition, their statements show how the administration's new treaty interpretation resoundingly fails to base its findings on the text and history of the treaty and the understandings of its negotiators.

I especially recommend sections III, IV, and V of Mr. Rhinelander's testimony for a clear explanation of the circumstances surrounding the drafting and signing of the treaty. These sections in particular reveal how misguided the administration's new interpretation is. I have also included a copy of the ABM Treaty and pertinent articles from the Washington Post and the New York Times.

If the Congress has anything to say about this—and it does—then we cannot let this haphazard reinterpretation of the treaty concocted in a matter of weeks overturn a treaty that has made a vital contribution to our national security for over 13 years.

STATEMENT OF GERARD C. SMITH

Mr. Chairman and Members of the Subcommittee: The Administration has adopted a new version of the ABM Treaty—a version which will permit the United States and the Soviet Union to engage in much more extensive work on space based defenses than

would have been permitted under the earlier version which pertained from 1972 to 1985. In fact, the new version would permit any development and testing activities short of final deployment of a full space-defense system.

I would like to consider the impact that this new version may have on Soviet-American relations, on America's relations with its allies, and on the SDI itself, I will leave to my colleague, John Rhinelander, the analysis of the thrust of the ABM Treaty on this score as it was negotiated.

The Administration now claims that for time being the new Treaty version is not intended to alter SDI programs. But it is also clear that the Administration feels free under the new version to alter the SDI program any time that would appear advantageous. So we have two possible criteria to guide the SDI. The so-called restricted policy and the new version. Although treaties are intended to produce some degree of predictibility in international relations, we have introduced a new element of uncertainty in future relations.

Although this issue is of special concern to the Senate, which consented to ratification of the ABM Treaty by a vote of 88 to 2 in its earlier version, I think the House would also have a special interest in the legal basis for programs which it is being asked to fund. The revised version of the Treaty alters it radically, and the threat of the revised version being applied at any time must have a bearing on Congress' responsibility for the defense of the United States—a responsibility which now involved large elements of arms control.

I should think the Congress would want to have firm assurances that funds appropriated for SDI work will not be spent for any new purposes permitted under the new version of the ABM Treaty as well as a clearer understanding of exactly what the so called restrictive policy encompasses. The confused and shifting status of the SDI reinforces the recent call by the Congressional Office of Technology Assessment for unusually strict congressional oversight of these programs.

The question may fairly be asked: Is this new Treaty version intended as a warning to the Soviet Union that if it does not improve its behavior, the United States will switch from a restrictive to a permissive treaty-authorized SDI program. I take it that the Administration's answer to this would be that it wouldn't mind if that was the effect.

Why did the Administration decide to float this new Treaty version just six weeks before a summit at which the ABM Treaty was expected to be an important part? Was it an exercise in playing hard ball? A gesture of machismo? Such an explanation would be consistent with the views of some officials who openly express contempt for this part of the supreme law of the land. Or was it a bargaining ploy looking to a summit accommodation somewhere between the Soviet pre-summit position of no research at all and the Reagan new version of no limits on strategic defense development?

What should be done? I trust that the Administration will take this opportunity at the summit to try to find out whether the Soviet Union accepts the previous interpretation of the Treaty—a proposition that the negotiators of the agreement believe and the Administration seems to doubt. I would think that Mr. Gorbachev would reassure the President on this point, since the Soviet Union has been pressing for a substantially more restricted position on space-based systems, rather than the less restricted position that the Administration previously advocated. I hope this committee will urge the President to do just that.

The surprising results of the recent legal research of a new generation of SALT experts may in the end prove significant if they trigger a summit clarification of the allowable limits of research looking to space-based ballistic missile defenses. But these actions could backfire. The arms control relation between the superpowers is in a fragile state. The United States has refused to ratify the last three arms control treaties, which it has negotiated with the Soviet Union. On top of this, the United States has now unilaterally revised the last arms control treaty which it has ratified—and done so in a radical fashion which goes to the heart of the bargain.

No reason has been given for the Presidential decision to hold for the time being to the traditional version of the Treaty in spite of the new legal license to operate in fundamental violation of its provisions. If our Secretary of Defense's emotional claim that SDI is our only hope for the future is true, why this self-restraint? If the President's claim is valid that SDI leads us to arms controls and total elimination of nuclear weapons, why would we want to put off that happy day by proceeding at a more leisurely pace than permitted by the new version of the Treaty?

It seems most unusual for a nation which holds itself to be a decade behind in its strategic defense preparations to favor a new version of the ABM Treaty that will free the Soviet Union to make much greater efforts to hold or even increase its alleged lead. But this outcome, according to one U.S. official, is a "realistic" view of our new Treaty revision.

The Administration bases its case on alleged ambiguities in the negotiating record. Unfortunately, under the time honored rules of diplomatic privacy, the evidence is not available. It would be a unique episode in international negotiations to have a completely unambiguous record—especially in a bargaining process requiring 2½ years. But be that as it may, the 13-year record for the parties holding to the original version should carry far greater weight than some statements reportedly inconsistent with the final language of the Treaty.

The ABM Treaty was a great policy accomplishment of President Nixon's first term. It would be of interest to ascertain if he believed that the Soviet Union has not accepted his understanding of the Treaty's ban on the development and testing of space-based systems.

Only two weeks before the White House announcement of the new Treaty version, six former Secretaries of Defense (Harold Brown, Clark Clifford, Melvin Laird, Robert McNamara, Elliot Richardson, and James Schlesinger) urged the President not to take any steps to further erode the ABM Treaty. Unfortunately, the experienced advice was quickly rejected.

The Geneva communique of last January called for negotiations to stop the erosion of the ABM Treaty. The U.S. adoption of new and radically permissive verison of the Treaty hardly reflects a deep commitment to preventing its further erosion. This development comes at a time when the Soviet Union is calling for a less permissive Treaty interpretation—one that would permit research, but no development work outside a laboratory. The Administration's justification for its complete reversal of its position appears to be that the Soviet Union did not agree to the tighter legal standard that we had accepted. This seems a very strange rationale coming at a time when the Soviet Union is pressing for a much more restrictive interpretation of the Treaty than ours.

The SDI has also become a source of considerable difficulty for important allies. They seem to be less clear than the Administration that SDI is the key to arms control which for them is perhaps more important than the United States in terms of domestic politics. It is reported that allies concerns generated by the revised version of the Treaty were a major factor in Secretary of State Shultz's efforts to blunt the impact of National Security Advisor MacFarlane's formulation of the new legal revision of the ABM Treaty. I wonder if the NATO members will be satisfied with the confusing partial withdrawal of last week's MacFarlane doctrine. The NATO allies are now on notice that the restrictive policy for the SDI program can be reversed at any time by the stroke of the pen of the Chief Executive.

For my own part I think the SDI at present is, if anything, too ambitious a program which raises serious questions under the previous restrictive version of the ABM Treaty. I do however favor a robust program of research as an insurance policy against a future Soviet breakout from the Treaty and as an aid to permit us better to understand what the Soviet Union may be up to.

In conclusion, I commend this Committee for its interests in this important issue and will urge them to seek a clarification on the true impact of the revised verison of the ABM Treaty on the SDI program.

STATEMENT OF JOHN B. RHINELANDER

Mr. Chairman and Members of the Subcommittee: My name is John B. Rhinelander. I am currently a partner in the law firm of Shaw, Pittman, Potts & Trowbridge in Washington, D.C. I am also a member of the Board of Directors of the Arms Control Association, a member of the National Advisory Board of the Lawyers Alliance for Nuclear Arms Control, and a member of the ABA's Standing Committee on Law and National Security. Previously, I have served as a law clerk to Justice John Marshall Harlan and in five departments in the Executive.

I appear today in my individual capacity. My views do not necessarily represent those of any of the organizations with which I am presently affiliated. My statement represents my best recollection, after discussions with former colleagues on the SALT I delegation who are now out of government and a review of some of the available literature, on the evolution of the ABM Treaty in 1971-72 and its meaning. The SALT I negotiating record is massive and classified. I have not had access to it since 1972 and have never seen the official ACDA history of SALT I which is also classified. I served as the legal adviser to the US SALT I delegation from 1971-72.

The primary issue before the Subcommittee today is whether Article V(1) of the ABM Treaty prohibits the development and testing of space-based and other mobile-type "exotic systems" (e.g., space-based lasers). The secondary issue is whether any of the Treaty's substantive constraints on "ABM systems or components" in Articles I(2), IV, V and IX apply to space-based "exotic systems". The answers are four-fold: (1) the prohibitions are clear from the text of the Treaty, particularly Article V(1) which

states, "Each Party undertakes not to develop, test or deploy ABM systems or components which are sea-based, air-based, space-based or mobile land-based"; (2) the negotiating history, as interpreted in 1972 by the SALT I delegation and the backstopping representatives in Washington, supports the broad ban on space-based "exotic systems" as the only permissible interpretation; (3) this has been the interpretation of the Executive, accepted and relied upon by Congress, since 1972; and (4) any other result is patently absurd and would frustrate the stated premise of this Treaty of indefinite duration—to prohibit the deployment of nationwide ABM systems or a "base" for such a system.

The Soviets accepted this interpretation during the negotiations, reflected it in their ratification proceedings, and have taken no actions and have not made any official statements inconsistent with this interpretation. This is the only conclusion one can draw from their public statements which sometimes deal with the issue implicitly and elliptically rather than explicitly. The Gorbachev interview with Time editors includes a specific statement, but without mentioning Article V, before the U.S. "reinterpretation" became known. The TASS statement of October 9, responding to the U.S. "reinterpretation", removes any ambiguity from the Soviet public position. Marshall Akhromeyev's lengthy comments on October 19, 1985, should lay to rest the Soviet public position.

The U.S. delegation in Geneva, and Members of Congress who are advisors, should know whether the Soviets have made their position explicit, and specifically tied to Article V(1), in the Geneva negotiations since 1972, since the President's Star Wars speech in March 1983, and since October 6, 1985.

I.

Based on National Security Advisor McFarlane's comments October 6 on NBC's Meet the Press, subsequent commentary on CBS, the article in the Washington Post on October 9 (attached as Exhibit A) and my telephone conversation that day with Deputy Secretary Taft at the Pentagon, the Administration had concluded that the Soviets never agreed to the U.S. position at SALT I, the Soviets cannot be held to abide to it today and, therefore, the U.S. is not legally bound. Deputy Secretary Taft told me that the General Counsel of DOD, the Legal Adviser at State, and the Department of Justice had, therefore, concluded that because the U.S. cannot legally hold the Soviets to the historic U.S. interpretation, the U.S. may take the position that the development and testing of sea-based, air-based, space-based and mobile land-based "exotic systems and components" may be developed and tested, but not deployed, consistent with the ABM Treaty.

On October 13, the President decided that he agreed "in principle, but not in practice" with this "reinterpretation". Based on a Presidential directive, Secretary Shultz announced on October 14 in a speech before the thirty-first annual meeting of the North Atlantic Assembly that "a broader interpretation of our authority is fully justified", but SDI "will be conducted in accordance with a restrictive interpretation of the treaty's obligations."

This leaves the U.S. legally free to return to the "reinterpretation" whenever the President's advisors deem advantageous and the President agrees. The story on October 17 in the Washington Post (see Exhibit B) makes this clear. DOD officials do not admit that they have yet lost the argument and stress Secretary Shultz did not state how long the Administration would continue to abide by the new "restrictive interpretation," which represents presidential policy rather than a matter of law.

The legal rationale for the "reinterpretation" revolves around Agreed Statement D. The argument is (1) that Article V(1) constrains only "traditional" ABM technology (ABM missiles, ABM launchers and ABM radars), and (2) therefore permits development, testing and deployment of "exotic systems and components", but (3) Agreed Statement D implicitly amends Article V(1) to prohibit deployment only of "exotic" systems and components.

This rationals is absurd as a matter of policy, intent and interpretation. If the Administration sticks with it as the best legal interpretation of the Treaty, then the Administration has effectively repudiated the ABM Treaty as a legal instrument. If the truncated Treaty remains in effect, then both the U.S. and Soviets can develop and test, without quantitative or geographic limits, any sea-based, air-based, space-based or mobile land-based ABM system or component provided they are based on "exotic systems and components".

But the result could be even more far reaching. Because the Administration's new interpretation is that Article V(1) and other Articles of the Treaty do not apply to "exotic systems" and Agreed Statement D blocks only their deployment, then the necessary consequences are that the limits on "ABM systems or components" throughout the Treaty do not include "exotic systems". This results in:

(1) the deployment bans on a nation-wide ABM defense, a base for such a defense, and a regional ABM defense (except as permitted by Article III) in Article I(2), which were fundamental statements of the Treaty's scope, are all limited to "traditional" ABM technology, (i.e., ABM launchers, ABM missiles and ABM radars) and do not apply to "exotic systems";

(2) the words "currently consisting of" in Article II(1), intended to make clear that the Treaty applied to all ABM technologies and not just "traditional" ones, are rendered devoid of meaning;

(3) because Article IV dealing with ABM test ranges explictly refers back to Article III (which authorizes limited deployments of fixed, land-based ABM launchers, ABM missiles and ABM radars), the geographic, quantitative and implicit qualitative limits in Article IV on ABM tests do not apply to tests of any type of mobile or space-based "exotic systems";

(4) Article V does not apply to all or almost all SDI programs, and the Homing Overlay Experiment (HOE) which was a kinetic energy test with a single intercept mechanism) could have been tested in a MIRVed configuration; and

(5) the prohibitions in Article IX against transfers of ABM systems or their components to other States, and deployment outside national territories, apply only to "traditional" technology and not to "exotic systems".

The consequences of this "reinterpretation" are dramatic when one considers that the principal U.S. concern has historically been with Soviet "breakout" capability based on "traditional" or "low tech" systems. These remain tightly constrained notwithstanding the "reinterpretation". On the other hand, most of SDI is now "legally" unconstrained by the Treaty.

With particular respect to the Soviets and their emphasis on "traditional" systems: (a) ABM deployment is limited to the one area surrounding Moscow; (b) ABM tests must be limited to their two ABM test ranges; (c) the development, testing and deployment of land-mobile "traditional" ABM systems and components is prohibited; and (d) the ban on the "upgrade" of surface-to-air (SAM) systems remains in full force. However, under the "reinterpretation" the Soviets now legally could place in the field an unlimited number of mobile land-based lasers (the Soviets have an active laser program) across the Soviet Union provided they were labeled for "test" purposes.

With particular respect to the U.S., it is now free to exploit its own, and Western technology, in the full pursuit of Star Wars. A full-scale, operational orbiting systems, with accompanying ground stations and including as many as 100 to 400 killer satellites and related sensors, could now be "legally" put in place as an extensive "test program" to prove out the new technology in a BMD system configuration. U.S. allies would be free of any Treaty restraints to participate in two-way transfers of most SDI technology, with the only "legal" constraints on "west-west" SDI technology those under the Munitions Control and Export Administration Acts.

This result is absurd. Unbeknownst to the U.S. SALT I delegation, the SALT I backstopping apparatus in Washington, the Nixon Administration and each of its successors, and Congress, the U.S. would now be in the most one-sided Treaty relationship imaginable. Ambassador Smith should be given a retrospective decoration by the Reagan Administration for one of the great feats in American diplomatic history!

Of course, it could not last for a minute. Arms control agreements are viable only as long as they are in the net interests of each party. Secretary Shultz has spoken of the need to "prevent the erosion of the ABM Treaty," but Defense Secretary Weinberger, Under Secretary Ikle, and Assistant Secretary Perle have repeatedly stated that they have no use for the ABM Treaty and the sooner the U.S. is without it the better. They momentarily prevailed in a brazen exercise well described in a New York Times editorial by Anthony Lewis (see Exhibit C). Unless the President or Congress repudiate this self-defeating legal "reinterpretation", or the U.S. and Soviets agree on specific Agreed Statements to put it to rest, DOD officials could move the issue again when the moment seems right to them.

The timing of the announcement of the initial "reinterpretation" remains obscure. DOD has known, of course, that under the historic interpretation the evolution of SDI research into development and testing would have to be stopped somewhere between 1988 (as I believe) and 1990 (as even DOD officials had privately conceded) unless either the Soviets agree to amand the Treaty or the U.S. formally withdraws. From a policy and political point of view, six weeks before the Summit, the "reinterpretation" by the U.S. with respect to a legally binding treaty could have been a disaster. The first concrete U.S. response to the Soviet proposal (admittedly lopsided) to cut offensive forces by 50% was to repudiate the ABM Treaty which, both had agreed last January, is interrelated to any offensive limitations.

One of the political reasons for the Administration's initial "reinterpretation" at this time may have been DOD's attempt to

encourage more Allies to support SDI by participating in cooperative SDI "research". (The negotiations with the U.K. on a government-to-government agreement may be completed before the Summit and an agreement with the FRG shortly thereafter). Foreign corporations, particularly in the United Kingdom and West Germany, might be encouraged by the "reinterpretation" because cooperation might be extended from ABM "research", which is all that is permitted under the historic U.S. interpretation, to include now "development and testing" with full sharing and two-way transfers.

The actual effect on U.S. Allies was the reverse because the political fallout of this full sharing in SDI technology directly associated with ABM systems or components would have been the implicit or explicit ratification by Allied governments of the repudiation of the ABM Treaty. That is a role that none is prepared to accept or condone, including the United Kingdom. Margaret Thatcher earlier had achieved at Camp David the President's agreement to four basic principles relating to SDI. Compliance with the ABM Treaty was one of them. The political cost in West Germany and the Netherlands (particularly since the latter must make its decision on cruise missile deployments by November 1) might be much higher for their governments and NATO as a whole.

The remainder of my statement sets forth my views on the negotiation and meaning of the ABM Treaty.

II

In April 1971, while I was serving in Washington as a Deputy Legal Adviser at the Department of State, Ambassador Gerard Smith asked me to come to the fourth negotiating session of SALT I in Vienna and prepare drafts of an ABM Treaty and an Interim Offensive Agreement. In March, the Soviet delegation had tabled a draft ABM Treaty. The U.S. delegation believed it was appropriate to begin to prepare formal texts of agreements on defensive and offensive strategic weapons limitations. I spent most of that session reviewing the record of the negotiations (plenary statements, memoranda of conversations, reporting cables, etc.), familiarizing myself with U.S. position papers and the technical characteristics of the weapons, and in discussions with members of the U.S. delegation. I also prepared rough first drafts of texts. The negotiating session ended in May 1971, shortly after the "May 20 understanding" between the US and Soviets was announced.

During the remainder of May and in June in Washington, I prepared successive drafts of an ABM Treaty and an Interim Agreement after input from others. I recollect that the Soviet draft of Article III was permissive—it stated both sides may deploy a single, fixed land-based ABM system with 100 ABM launchers and no limits on ABM radars within the deployment areas. This text was vague, imprecise and, among other things, an invitation to pursue and deploy both stand-alone components, such as long lead-time ABM radars, and ABM systems based on "exotic" technologies. In my drafts, I turned Article III around into the form eventually agreed upon and also tightened it.

Article III, as drafted, prohibited deployment of any ABM system or components except those in the deployment areas and as limited quantitatively, qualitatively and geographically. The text of Article III, standing alone, prohibited the deployment of fixed land-based "exotic" ABM systems and components because only systems utilizing ABM launchers, ABM missile and ABM radars could be deployed. This raised the "exotic system" question directly for inter-agency consideration.

The other substantive Articles always referred to "ABM systems" and to "components" to make clear the U.S. position that components were limited and not just entire systems.

The Soviet draft of March 1971 contained prohibitions on testing and deployment of "space-based" in what is now Article V(1), as did my drafts of May-June 1971 which, I believe, added "develop." The gist of this article was derived from the August 4, 1970 proposal by the U.S. for bans on production, testing and deployment of all mobile-type ABM systems.

The drafts of May-June 1971 were reviewed by members of the SALT delegation while in Washington. Some of them had sharply differing views on "exotic systems" and other questions.

III

The fifth negotiating session began in Helsinki in early July 1971. After taking into account the President's written instructions, the delegation revised my drafts, cabled texts of an ABM Treaty and an in trim Agreement to Washington, and sought authorization to table them in a plenary session. On the "exotic systems" questions, the delegation was split. Gerard Smith wrote in Doubletalk: The Story of SALT I (Doubleday, 1980), that he and Harold Brown supported a broad ban; Paul Nitze concurred except for sensors; but General Allison and Ambassador Parsons favored no restraints at all on "exotic systems" (pp. 263-65).

The delegation was subsequently authorized to table the text of both agreements, which it did on July 27, but with the article in the ABM Treaty covering space-based systems omitted. The Verification Panel in Washington was still analyzing the "exotic systems" question. Eventually, the President rejected an ABM ban which Ambassador Smith had urged, but about the same time he approved a White House staff compromise to the basic Smith-Brown position on "exotic systems" which would prohibit (1) the deployment of fixed land-based and (2) the development, testing and deployment of all other basing modes. The Joint Chiefs of Staffs were particularly interested in preserving the option to develop and test fixed-land-based lasers. The President's decision preserved this option, as does the ABM Treaty itself. See John Newhouse, Cold Dawn: The Story of SALT (Holt, Reinhart, 1973), pp. 230-31, 237; Raymond L. Garthoff, Detente and Confrontation: American-Soviet Relations from Nixon to Reagan (Brookings Institution, 1985) ch. 5.

The U.S. delegation filled in the blank Article in its ABM Treaty in mid-August 1971. The Soviets initially balked at discussing, let alone agreeing to any limitations on, "exotic systems". They were probably without any instructions on this issue and may have felt the U.S. was on an intelligence-fishing expedition. Progress was soon made nevertheless. Various working groups and a drafting group were set up to seek agreement issue by issue. Joint Draft Texts of the Soviet and U.S. drafts of the Treaty were prepared with disagreed language, which at first was extensive, in brackets.

The Graybeal-Karpov Working Group focused on Article V. (Sid Graybeal was later the US Commissioner to the Standing Consultative Commission. Victor Karpov is currently the head of the Soviet delegation in Geneva.) Before the conclusion of the fifth negotiating session in September 1971, the Graybeal-Karpov working group agreed, ad referendum to the two delegations, that current Article V(1) covered "current" as well as "exotic" technologies. The U.S. delegates agreed that the Americans on this working group (which included Albert Carnesale, now at the Kennedy School at Harvard) had carried out the President's instructions. The brackets around "develop" in that paragraph in Article V in the Joint Draft Text were subsequently removed in the drafting group during the sixth negotiating session after both delegations had noted their approval. The Administration now contends that either the Soviets never agreed with the U.S. interpretation or that the Soviets later modified their agreement or changed their interpretation during negotiations over Agreed Statement D. The U.S. members on this Working Group would sharply differ with this view.

The major sticking point then, and through late into the sixth negotiating session, was on fixed land-based systems. U.S. instructions were to preserve the right to develop and test, but not to deploy, fixed land-based lasers. Accordingly, the U.S. delegation insisted that Article II should authorize deployment of only ABM systems and components which are based on "current" technology. Further, development and testing, whatever the technology, of fixed land-based systems and components could be carried out only at ABM test ranges. The Soviets resisted any limitations on fixed land-based "exotic systems". As John Newhouse, who many believe was given at least some access to NSC files, wrote (Cold Dawn, p. 237):

"Back in the summer, Moscow's attitude, as reflected by its delegation, had been sympathetic. Then, in the autumn, it hardened, probably under pressure from the military bureaucracy. Washington was accused of injecting an entirely new issue. Moscow would not agree to a ban on future defensive systems, except for those that might be space-based, sea-based, air-based, or mobile land-based. The U.S. delegation persisted and was rewarded. Land-based exotics would also be banned. The front channel had produced an achievement of incalculable value."

IV

The Article III issue was not resolved until late in the sixth (Vienna in November 1971-February 1972) negotiating session. It was handled principally in the Garthoff and Kishilov or Grinevsky working group and also in the Garthoff-Parsons-Kishilov/Grinevsky group (Ray Garthoff and Nicolai Kishilov were the executive secretaries of the respective delegations.) The U.S. proposed the "currently consisting of" phrase which was agreed upon for Article II to make clear that the Treaty was not limited to "traditional" technology. The U.S. proposal for the "except that" formulation for Article III was accepted which made clear that fixed land-based "exotic" systems could not be deployed. The ban against a nationwide defense or "base" for such a defense in Article I(2), which was a Soviet initiative intended in part to deal with "exotic systems", was agreed. In each case, agreement was ad referendum to the delegations. Together, these textual provisions completed all the key words in the Treaty relating to "exotic systems".

An agreed interpretation tied to Articles I and III was first proposed by Garthoff in

mid-December 1971. I distinctly recollect advising that no supplementary interpretation was technically necessary. The U.S. effort, therefore, was to reinforce the clear meaning of the specific Article III and the more general Article I(2).

The U.S. had originally proposed a paragraph for the Treaty in August 1971. It stated: "Each party undertakes not to deploy ABM systems using devices other than ABM interceptor missiles, ABM launchers or ABM radars to perform the functions of these components". Doubletalk, pp. 265, 343-44. The Soviets balked at any Treaty language and, subsequently, the initial U.S. proposal for an agreed interpretation. Eventually the Soviets proposed a counter draft. This was modified several times at U.S. insistence (including the insertion of the opening phrase "In order to insure fulfillment of the obligation not to deploy ABM systems and their components except as provided in Article III of the Treaty * * *"). The reference to Article XIV in Agreed Statement D indicated that the Treaty would have to be amended before a fixed land-based "exotic," such as a laser, could be deployed. The final compromise language was proposed by Garthoff to the Soviets in late January 1972 and early in February Kishilov informed Garthoff of Soviet agreement. This was eventually noted in an US plenary statement. Agreed Statement D and the other Agreed Statements were initialed on May 26, 1972 by Ambassadors Smith and Semenov.

Agreed Statement D refers to, and interprets, Article III only, although the reference to "other physical principles" and "components capable of substituting for" are equally applicable to Article V(1). While the language is admittedly opaque, the U.S. has always understood that Agreed Statement D reinforced Articles I(2) and III and reinforced the prohibition on deployment of fixed land-based "exotic systems" unless and until the Treaty is amended. Finally, and most importantly, Agreed Statement D certainly does not diminish or amend Article V(1) and the other substantive Articles such as I(2), IV, V(2) and IX.

V

During the seventh negotiating session, I prepared detailed memoranda on both the ABM Treaty and the Interim Agreement intended to serve four distinct purposes: (1) inform the delegation on what was agreed with the Soviets and what was not; (2) suggest whether the U.S. should consider seeking one or more Agreed Statements to provide more specific interpretations; (3) indicate what types of weapons programs, current and future, were prohibited and permitted; and (4) serve as the basis for the eventual transmittal documents to Congress and background for the Congressional hearings.

Successive drafts of my memoranda were shared within the delegation. Where there was any doubt that a matter was agreed, the proposition was enclosed in brackets. The brackets were removed only after I, and others on the U.S. delegation, were satisfied. I constantly revised the drafts as issues were reviewed. The draft memoranda were never made "final."

In certain cases the U.S. delegation sought and achieved Agreed Statements. In others it did not seek them. Some matters were judged agreed, while others were not. To the best of my recollection, the U.S. delegation never sought an Agreed Statement confirming that Article V(1) covered "exotic systems." We probably felt that seeking further specific agreement was unnecessary and would not be productive. In any event, I am absolutely certain that my contemporaneous advice to the U.S. delegation on the scope of Articles III and V(1) with respect to "exotic" systems was clear and that none of the delegates nor their advisors (State, ACDA, JCS and OSD) disagreed with that advice. I recall no indication that the Soviets thought otherwise.

During SALT I the US delegation, and particularly Washington, did not insist on the kind of precision reached in the SALT II Treaty with its 98 Agreed Statements and Common Understandings. The Soviets stubbornly resisted the level of textual detail the US had initially sought at SALT I. Neither the President nor Henry Kissinger cared much for detail. During the final three negotiating sessions, the US delegation made ad hoc decisions on how the Presidential instructions should be sought and recorded on many issues, how hard to push for additional clarity, and what sufficed, but constantly reported to Washington.

In one instance relating to the ABM Treaty ("current" Soviet ABM test ranges), the U.S. delegation identified the two US ABM test ranges and the Soviet test range at Sary Shagan. The Soviet response noted national technical means permitted the identification of test ranges. (The U.S. and Soviet statements are set forth in Common Understanding B.) The U.S. delegation noted immediately that the Soviets did not respond to the U.S. identification of Sary Shagan as their ABM test range, but the delegation believed the Soviet response reflected extreme Soviet sensitivity to any discussion of their test range. However, in the mid-1970s the Soviets claimed a second "current" ABM test range at Kamchatka based on the presence of an old rader. Paul Nitze has referred to this negotiating technique as unworthy of bazaar traders. I agree. The U.S. eventually accepted the Soviet claim in 1978 because there was a factual basis for it, but learned from this example, and particularly from the Moscow Summit negotiations on the Interim Agreement, that explicit agreement and written precision is important. The SALT II documentation reflects this learning.

SALT I, however, did not have this benefit of later-day hindsight indicating the need for precision and detailed Agreed Statements and Common Understandings reflected in the SALT II Treaty. Some of the SALT I underlying understandings are reflected in formal plenary statements, others in the less formal mini-plenary statements and some in working documents, memoranda of conversations ("memcons") and reporting cables. Agreement was reached ad referendum in one or more working groups, approved by the two delegations, referred to the drafting group, to the interpreters, etc. On many points there will not be simple, clear documentation. In addition, the U.S. government (but not the Soviets) has lost most of its SALT I historical memory.

Some interpretation matters were in 1972, and remain today, ambiguous and need clarification. The dividing line between permitted "research" and prohibited "develop" and "test" is not clear, nor is the related meaning of "component," in the broad prohibitory context of banning "exotic systems" under Article V(1). There is no Agreed Statement on either issue. The former was discussed in a formal statement delivered by Harold Brown and a general understanding, although not a fully documented record, was reached. I do not recall any discussion of the latter with the Soviets.

VII

The SALT delegation remained in Helsinki until agreement on open points, primarily the Interim Agreement, was reached at the Moscow Summit. When the delegation returned to Washington, and the transmittal documents and Congressional statements were being prepared under White House control, Henry Kissinger directed that all "understandings" be culled from the negotiating record and made public to refute criticism of secret agreements. This was the derivation of the SALT I Common Understandings. The search of the files for Common Understandings limited. It did not cover all the myriad of agreed understandings reached in less formal ways during the negotiations.

The hearings before the Senate Foreign Relations Committee, and particularly the Senate Armed Services Committee, led to a much fuller public record on many of the nuances. Some of the initial testimony of officials was not clear, but the record was frequently supplemented. This includes the statement for the record of the Senate Armed Services Committee, prepared after inter-agency review of reporting cables, on the difference between research and development for purposes of Article V. It includes explicit confirmations submitted by Secretary of Defense Melvin Laird, Under Secretary for DDR&E John Foster, and Acting Chief of Staff of the Army General Palmer, all to Senator Jackson, that development and testing, as well as deployment, of space-based "exotic systems" were prohibited. Senator Jackson (D, Wash.), who was a sharp critic of SALT I but voted in favor of the ABM Treaty, understood this point clearly. He was probably the most knowledgeable Senator on the impact of SALT I on weapons programs. Finally, Senator James Buckley (R, NY) stated on the Senate floor on August 3, 1972 that he opposed the ABM Treaty and would vote *against* it largely because of this prohibition. He said:

"Thus the agreement goes so far as to prohibit the development, test or deployment of sea, air or space based ballistic missile defense systems. This clause, in article V of the ABM treaty, would have the effect, for example, of prohibiting the development and testing of a laser type system based in space which could at least in principle provide an extremely reliable and effective system of defense against ballistic missiles. The technological possibility has been formally excluded by this agreement."

The vote in favor of advice and consent to ratification was 88-2.

VIII

I resigned from government in June 1972 after the transmittal documents had been sent to Congress and before the hearings. While I later served at HEW as General Counsel and at HUD as Under Secretary between 1973 and 1977, I have had no official role in the SALT process since June 1972. I left behind at ACDA two complete file cabinets of all my working papers which I have not seen since 1972. I understand they were later sent to a warehouse by ACDA and the files cannot now be located although copies of some documents, including at least the last two drafts of my memoranda analyzing the ABM Treaty, were preserved by the JCS and perhaps in some other files.

In 1972-73 while in private practice, I coedited a book on SALT and wrote chapter 5 on "The SALT I Agreements." I have attached to this statement the pages from

that chapter (Willrich and Rhinelander (editors), SALT: The Moscow Agreements and Beyond (Free Press, 1974)) on the ABM Treaty (Exhibit D). Pages 128-29 and 134 are directly on point with respect to "exotic systems." They summarize my immediate recollection of the advice I gave to the U.S. delegation which was the basis for the Executive position before, during and after the ratification process. Prior to publication of the book, I informally cleared my chapter with government officials to ensure both accuracy and non-disclosure of sensitive information.

Over the past eight years, I have been informally queried on various issues by officials at the JCS, OSD, State, ACDA and the CIA. One question in the late 1970s was whether there were any deployment limits on fixed land-based "exotic systems." This question had been reopened in OSD, sharply debated with JCS supporting the traditional U.S. position, and then correctly resolved. This question also involved Agreed Statement D, but in this case the OSD argument was that there were no deployment limits under Article III on fixed land-based "exotic systems" and only an obligation to discuss. This is almost the exact reverse of the Reagan Administration's "reinterpretation" which now claims the deployment limits in Agreed Statement D prohibits only deployment of systems referred to in Articles III and V(1).

To the best of my knowledge, the challenge to Article V(1) within the Executive arose only recently although the Heritage Foundation circulated a Backgrounder dated April 4, 1985 rejecting the traditional interpretation. A footnote stated it was authored by an unnamed government official.

This past spring I co-authored with Tom Longstreth and John Pike a booklet on The Impact of U.S. and Soviet Ballistic Missile Defense Programs on the ABM Treaty, National Campaign to Save the ABM Treaty (March 1985). In April, I testified before this Subcommittee and excerpts from my formal statement were reprinted in Arms Control Today (May 1985). In July I presented a paper at a SIPRI conference which sets forth my most recent analyses and recommendations. A copy of the latter, as revised in August, is attached as Exhibit E. These documents reflect my views on the correct interpretations of the ABM Treaty and basic issues raised by current U.S. and Soviet BMD programs.

In my judgment, the FY85 Arms Control Impact Statement prepared by the Reagan Administration correctly states the agreement reached with the Soviets in 1971-72 on the meaning of Article V(1). It provides (pp. 251-52):

"The ABM Treaty bans the development, teasting and deployment of *all* ABM systems and components that are sea-based, air-based, space-based or mobile land-based. . . . The ABM Treaty prohibition on development, testing and deployment of space-based ABM systems, or components for such systems, *applies to directed energy technology (or any other technology used for this purpose.)* Thus, when such directed energy programs enter the field testing phase they become constrained by these ABM Treaty obligations." [Emphasis added.]

The SDI Report to Congress (April 1985), especially Appendix B, is consistent with this statement.

IX

In the Soviet parliamentary ratification deliberations, the First Deputy Minister of Foreign Affairs, Vasily V. Kuznetsov, "on behalf of the Soviet Government," gave the Presidium of the Supreme Soviet the official Soviet position on the ABM Treaty. He said that, "The sides pledge themselves not to create or develop ABM systems or components emplaced in the sea, the air or space or of a mobile ground type. * * *" He presented this as a clear obligation of the Treaty as a whole. (See Pravda, September 30, 1972, as translated in FBIS, Oct. 3, 1972).

Based on my review of available documents, the Soviets had not explicitly tied this interpretation to "exotic systems" in public until recently although their statements implicitly supported this as the only interpretation of the entire Treaty, including Article V(1). However, general Secretary Gorbachev's written response to *TIME* states, "In our view, it [SDI] is the first stage of the project to *develop a new ABM system prohibited under the Treaty of 1972.* See *TIME* (Sept. 9, 1985), p. 24. [Emphasis added.] (See also Soviet documents printed in *Ballistic Missile Defense Technologies* (OTA, 1985) pp. 312-15.)

Specific Soviet responses to the US "reinterpretation" which was made first on television and then repeated in the press are contained in FBIS on October 9 and 10. They include the translation of a TASS commentary and an English-language TASS article. The former, as translated by FBIS, includes:

"According to the CBS television company, one of the latest administration reports contains the 'conclusion' that the antimissile defense treaty, which strictly restricts the development [sozdaniye] of antimissiles, allegedly does not restrict the development [razrabotka] and testing of "exotic" types of weapons—Laser and beam weapons—at all. It is quite clear which way such "interpreters" are taking the matter. Having just the other day tested land-based laser installations, the United States is now planning to site a laser weapon on board a space-craft and test it directly in space.

"It would evidentally not be inappropriate to remind some people in Washington yet again that the antimissile defense treaty (Article 5) prohibits both the development [sozadaniey] and testing of space-based antimissile defense systems or components. The treaty provisions relate to any systems designed, as defined by Article 2, for fighting against strategic ballistic missiles or their elements on flight trajectories. Since the antimissile defense components being created within the "star wars" program are designed for precisely this purpose, that is are intended to replace the antimissiles mentioned in the treaty (or to act together with antimissiles), all provisions of the treaty relate to these, regardless of the degree of 'exoticness' of their principles of operation. It is high time the irresponsible "interpreters" [tolkovaterli] from Washington gave up their useless and dangerous occupation, listened to the voice of the world public, which they are trying to delude, and directed their efforts to positive goals. And they do have something to think over: The set of Soviet initiatives offers broad scope for constructivism."

Finally, Marshal Sergei Akhormeyev, the Chief of the Soviet General Staff, made lengthy comments in an article in Pravda. He said the ABM Treaty "unambiguously bans" the development, testing and deployment of space-based ABM systems. See New York Times, October 19, 1985 (Exhibit F). Marshall Akhromeyev explictly confirms the historic U.S. position of the ban on space-based "exotic systems." The Subcommittee should obtain the full FBIS translation of these comments as soon as they are available and include them in the record of these hearings.

The Administration's justification for its "reinterpretation" is that the Soviets cannot be held to comply with the historic U.S. position. Instead of reinterpretating the clear text of the 1972 Treaty based on a selective review of the classified U.S. negotiating records, the better approach would have been to ask the Soviet negotiators in private in Geneva (and specifically Ambassador Karpov who had a crucial role on this issue at SALT I) whether or not the Soviet Union agrees that Article V(1) bans the developments, testing and deployment of "exotic systems." If the private Soviet response had been "no," then the Administration's "reinterpretation" would have been justified.

If the private Soviet response in Geneva were "yes," as one would expect from their public statements since 1972, then the October 6 "reinterpretation" and the October 13 recanting by the Administration would have been unnecessary. Agreed Statements on the basic points could have been quickly negotiated if deemed necessary for clarity.

If a private but positive Soviet response in Geneva were now rejected by the U.S. as "too late" because the U.S. wanted to keep open the option of reasserting its "reinterpretation," then the OSD motive behind the initial change in U.S. position—to erode immediately and eventually destroy the ABM Treaty—would be clear.

X

As I have testified, written and spoken in various forums in the past two years, the challenge now is to strengthen the ABM Treaty through specific, mutual and verifiable Agreed Statements and Common Understandings. Six former Secretaries of Defense endorsed the importance of the Treaty and the need to strengthen it before this controversy broke (see Exhibit G).

Of course the Soviets must become responsive on the Krasnoyarsk radar which appears to be a clear violation. The booklet I co-authored this spring contains a series of specific recommendations (see Exhibit H) which were intended to start a constructive process consistent with Secretary Shultz's stated goal of reversing the erosion of the ABM Treaty.

In conclusion, let me suggest approaches for three Agreed Statements based upon, and entirely consistent with, my recollection of the SALT I negotiating record which would clarify the overall scope of the ABM Treaty, particularly Article V(1):

(1) First Agreed Statement to Article II(1). As used in this Treaty, "AMB systems." "ABM systems or components," "ABM systems and components" and "ABM systems or their components" include ABM interceptor missiles, ABM launchers, and ABM radars as defined in Article II(1) and any devices based on other physical principles which are capable of substituting for or performing the functions of ABM interceptor missiles, ABM launchers, or ABM radars.

(2) First Agreed Statement to Article V(1). Article V(1) applies to ABM components and any devices based on other physical principles which are capable of substituting for or performing the functions of ABM components, any of which are sea-based, air-based, space-based or mobile land-based.

(3) Second Agreed Statement to Article V(1). As used in Article V(1), "develop"

refers to that stage of the research and development cycle at which field testing, observable by national technical means, is initiated on ABM components or on any devices which are capable of substituting for or performing the functions of ABM components.

The third suggestion is obviously incomplete. It points out the compelling need to begin the difficult process of resolving some of the ambiguities inherent in the ABM Treaty. The Standing Consultative Commission (SCC) was established with this as one of its assigned tasks. The SCC has been underutilized. The SCC could easily, and quickly, also review and revise Agreed Statement D to make its intended meaning clearer. A starter in replacing Agreed Statement D could be:

First Agreed Statement to Article III. Article III prohibits the deployment of fixed land-based devices based on other physical principles which are capable of substituting for or performing the functions of fixed land-based ABM systems or components as defined in Article II(1).

First Agreed Statement to Article IV. Fixed land-based devices based on other physical principles which are capable of substituting for or performing the functions of ABM components as defined in Article II(1) may be developed and tested at ABM test ranges described in Article IV.

First Agreed Statement to Article XIV(1). Any obligation in this Treaty may be discussed in accordance with Article XIII and an amendment adopted in accordance with Article XIV.

The six suggested Agreed Statements do not even touch on the question of distinguishing a "component," or device capable of substituting for or performing the function of a component, from a "subcomponent," assembly, adjunct, etc., or the equally difficult question of distinguishing ABM-related space-based sensors from space-based sensors for early warning or for other purposes. Counting rules, presumptions, and ad hoc approaches will all be necessary. These challenges will be truly difficult even with the best of intents.

Before constructive steps can start, however, and assuming the Soviets are prepared to negotiate and not just posture, the President should publicly repudiate the legal advice he has recently received from his advisors on a narrow scope of Article V(1) and other critical Articles of the ABM Treaty. Congress could contribute to this result by approving an amendment to the pending DOD appropriations bill which limits fund expenditures to the legal standard in the FY85 Arms Control Impact Statement. This would be a positive step as negotiations continue with the Soviets prior to the Summit.

This whole sorry business could lead to a constructive ending if the U.S. and Soviets were to agree privately in Geneva, before, at or after the Summit, on Agreed Statements along the lines that I have suggested. These should be only the first of many steps needed to avoid further erosion of the ABM Treaty of 1972.

TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE LIMITATION OF ANTI-BALLISTIC MISSILE SYSTEMS

Signed at Moscow May 26, 1972
Ratification advised by U.S. Senate August 3, 1972
Ratified by U.S. President September 30, 1972
Proclaimed by U.S. President October 3, 1972
Instruments of ratification exchanged October 3, 1972
Entered into force October 3, 1972

The United States of America and the Union of Soviet Socialist Republics, hereinafter referred to as the Parties,

Proceeding from the premise that nuclear war would have devastating consequences for all mankind,

Considering that effective measures to limit anti-ballistic missile systems would be a substantial factor in curbing the race in strategic offensive arms and would lead to a decrease in the risk of outbreak of war involving nuclear weapons,

Proceeding from the premise that the limitation of anti-ballistic missiles systems, as well as certain agreed measures with respect to the limitation of strategic offensive arms, would contribute to the creation of more favorable conditions for further negotiations on limiting strategic arms,

Mindful of their obligations under Article VI of the Treaty on the Non-Proliferation of Nuclear Weapons,

Declaring their intention to achieve at the earliest possible date the cessation of the nuclear arms race and to take effective measures toward reductions in strategic arms, nuclear disarmament, and general and complete disarmament,

Desiring to contribute to the relaxation of international tension and the strengthening of trust between States,

Have agreed as follows:

ARTICLE I

1. Each party undertakes to limit anti-ballistic missile (ABM) systems and to adopt other measures in accordance with the provisions of this Treaty.

2. Each Party undertakes not to deploy ABM systems for a defense of the territory of its country and not to provide a base for such a defense, and not to deploy ABM systems for defense of an individual region except as provided for in Article III of this Treaty.

ARTICLE II

1. For the purpose of this Treaty an ABM system is a system to counter strategic ballistic missiles or their elements in flight trajectory, currently consisting of:

(a) ABM interceptor missiles, which are interceptor missiles constructed and deployed for an ABM role, or of a type tested in an ABM mode;

(b) ABM launchers, which are launchers constructed and deployed for launching ABM interceptor missiles; and

(c) ABM radars, which are radars constructed and deployed for an ABM role, or of a type tested in an ABM mode.

2. The ABM system components listed in paragraph 1 of this Article include those which are:

(a) operational;

(b) under construction;

(c) undergoing testing;

(d) undergoing overhaul, repair or conversion; or

(e) mothballed.

ARTICLE III

Each Party undertakes not to deploy ABM systems or their components except that:

(a) within one ABM system deployment area having a radius of one hundred and fifty kilometers and centered on the Party's national capital, a party may deploy: (1) no more than one hundred ABM launchers and no more than one hundred ABM interceptor missiles at launch sites, and (2) ABM radars within no more than six ABM radar complexes, the area of each complex being circular and having a diameter of no more than three kilometers; and

(b) within one ABM system deployment area having a radius of one hundred and fifty kilometers and containing ICBM silo launchers, a Party may deploy: (1) no more than one hundred ABM launchers and no more than one hundred ABM interceptor missiles at launch sites, (2) two large phased-array ABM radars comparable in potential to corresponding ABM radars operational or under construction on the date of signature of the Treaty in an ABM system deployment area containing ICBM silo launchers, and (3) no more than eighteen ABM radars each having a potential less than the potential of the smaller of the above-mentioned two large phased-array ABM radars.

ARTICLE IV

The limitations provided for in Article III shall not apply to ABM systems or their components used for development or testing, and located within current or additionally agreed test ranges. Each Party may have no more than a total of fifteen ABM launchers at test ranges.

ARTICLE V

1. Each Party undertakes not to develop, test, or deploy ABM systems or components which are sea-based, air-based, space-based, or mobile land-based.

2. Each Party undertakes not to develop, test, or deploy ABM launchers for launching more than one ABM interceptor missile at a time from each launcher, not to modify deployed launchers to provide them with such a capability, not to develop, test, or deploy automatic or semi-automatic or other similar systems for rapid reload of ABM launchers.

ARTICLE VI

To enhance assurance of the effectiveness of the limitations on ABM systems and their components provided by the Treaty, each Party undertakes:

(a) not to give missiles, launchers, or radars, other than ABM interceptor missiles, ABM launchers, or ABM radars, capabilities to counter strategic ballistic missiles or their elements in flight trajectory, and not to test them in an ABM mode, and

(b) not to deploy in the future radars for early warning of strategic ballistic missile attack except at locations along the periphery of its national territory and oriented outward.

ARTICLE VII

Subject to the provisions of this Treaty, modernization and replacement of ABM systems or their components may be carried out.

ARTICLE VIII

ABM systems or their components in excess of the numbers or outside the areas specified in this Treaty, as well as ABM systems or their components prohibited by this Treaty, shall be destroyed or dismantled under agreed procedures within the shortest possible agreed period of time.

ARTICLE IX

To assure the viability and effectiveness of this Treaty, each Party undertakes not to transfer to other States, and not to deploy outside its national territory, ABM systems or their components limited by this Treaty.

ARTICLE X

Each Party undertakes not to assume any international obligations which would conflict with this Treaty.

ARTICLE XI

The Parties undertake to continue active negotiations for limitations on strategic offensive arms.

ARTICLE XII

1. For the purpose of providing assurance of compliance with the provisions of this Treaty, each Party shall use national technical means of vertification at its disposal in a manner consistent with generally recognized principles of international law.

2. Each Party undertakes not to interfere with the national technical means of verification of the other Party operating in accordance with paragraph 1 of this Article.

3. Each Party undertakes not to use deliberate concealment measures which impede verification by national technical means of compliance with the provisions of this Treaty. This obligation shall not require changes in current construction, assembly, conversion, or overhaul practices.

ARTICLE XIII

1. To promote the objectives and implementation of the provisions of this Treaty, the Parties shall establish promptly a Standing Consultative Commission, within the framework of which they will:

(a) consider questions concerning compliance with the obligations assumed and related situations which may be considered ambiguous;

(b) provide on a voluntary basis such information as either Party considers necessary to assure confidence in compliance with the obligations assumed;

(c) consider questions involving unintended interference with national technical means of verification;

(d) consider possible changes in the strategic situation which have a bearing on the provisions of this Treaty;

(e) agree upon procedures and dates for destruction or dismantling of ABM systems or their components in cases provided for by the provisions of this Treaty;

(f) consider, as appropriate, possible proposals for further increasing the viability of this Treaty; including proposals for amendments in accordance with the provisions of this Treaty;

(g) consider, as appropriate, proposals for further measures aimed at limiting strategic arms.

2. The Parties through consultation shall establish, and may amend as appropriate, Regulations for the Standing Consultative Commission governing procedures, composition and other relevant matters.

ARTICLE XIV

1. Each Party may propose amendments to this Treaty. Agreed amendments shall enter into force in accordance with the procedures governing the entry into force of this Treaty.

2. Five years after entry into force of this Treaty, and at five-year intervals thereafter, the Parties shall together conduct a review of this Treaty.

ARTICLE XV

1. This Treaty shall be of unlimited duration.

2. Each Party shall, in exercising its national sovereignty, have the right to withdraw from this Treaty if it decides that extraordinary events related to the subject matter of this Treaty have jeopardized its supreme interests. It shall give notice of its decision to the other Party six months prior to withdrawal from the Treaty. Such notice shall include a statement of the extraordinary events the notifying Party regards as having jeopardized its supreme interests.

ARTICLE XVI

1. This Treaty shall be subject to ratification in accordance with the constitutional procedures of each Party. The Treaty shall enter into force on the day of the exchange of instruments of ratification.

2. This Treaty shall be registered pursuant to Article 102 of the Charter of the United Nations.

Done at Moscow on May 26, 1972, in two copies, each in the English and Russian languages, both texts being equally authentic.

For the United States of America: RICHARD NIXON, *President of the United States of America.*

For the Union of Soviet Socialist Republics: L.I. BREZHNEV, *General Secretary of the Central Committee of the CPSU.*

AGREED STATEMENTS, COMMON UNDERSTANDINGS, AND UNILATERAL STATEMENTS REGARDING THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE LIMITATION OF ANTI-BALLISTIC MISSILES

1. AGREED STATEMENTS

The document set forth below was agreed upon and initiated by the Heads of the Delegations on May 26, 1972 (letter designations added):

AGREED STATEMENTS REGARDING THE TREATY BETWEEN THE UNITED STATES OF AMERICA AND THE UNION OF SOVIET SOCIALIST REPUBLICS ON THE LIMITATION OF ANTI-BALLISTIC MISSILE SYSTEMS

[A]

The Parties understand that, in addition to the ABM radars which may be deployed in accordance with subparagraph (a) of Article III of the Treaty, those non-phased-array ABM radars operational on the date of signature of the Treaty within the ABM system deployment area for defense of the national capital may be retained.

[B]

The Parties understand that the potential (the product of mean emitted power in watts and antenna area in square meters) of the smaller of the two large phased-array ABM radars referred to in subparagraph (b) of Article III of the Treaty is considered for purposes of the Treaty to three million.

[C]

The Parties understand that the center of the ABM system deployment area centered on the national capital and the center of the ABM system deployment area containing ICBM silo launchers for each Party shall be separated by no less than thirteen hundred kilometers.

[D]

In order to insure fulfillment of the obligation not to deploy ABM systems and their components except as provided in Article III of the Treaty, the Parties agree that in the event ABM systems based on other physical principles and including components capable of substituting for ABM interceptor missiles. ABM launchers, or ABM radars are created in the future, specific limitations on such systems and their components would be subject to discussion in accordance with Article XIII and agreement in accordance with Article XIV of the Treaty.

[E]

The Parties understand that Article V of the Treaty includes obligations not to develop, test or deploy ABM interceptor missiles for the delivery by each ABM interceptor missile of more than one independently guided warhead.

[F]

The Parties agree not to deploy phased-array radars having potential (the product of mean emitted power in watts and antenna area in square meters) exceeding three million, except as provided for in Articles III, IV and VI of the Treaty, or except for the purposes of tracking objects in outer space or for use as national technical means of verification.

[G]

The Parties understand that Article IX of the Treaty includes the obligation of the US and the USSR not to provide to other States technical descriptions or blue prints specially worked out for the construction of ABM systems and their components limited by the Treaty.

2. COMMON UNDERSTANDINGS

Common understanding of the Parties on the following matters was reached during the negotiations:

A. Location of ICBM defenses

The U.S. Delegation made the following statement on May 26, 1972:

Article III of the ABM Treaty provides for each side one ABM system deployment area centered on its national capital and one ABM system deployment area containing ICBM silo launchers. The two sides have registered agreement on the following statement: "The Parties understand that the center of the ABM system deployment area centered on the national capital and the center of the ABM system deployment area containing ICBM silo launchers for each Party shall be separated by no less than thirteen hundred kilometers." In this connection, the U.S. side notes that its ABM system deployment area for defense of ICBM silo launchers, located west of the Mississippi River, will be centered in the Grand Forks ICBM silo launcher deployment area. (See Agreed Statement [C].)

B. ABM test ranges

The U.S. Delegation made the following statement on April 26, 1972:

Article IV of the ABM Treaty provides that "the limitations provided for in Article III shall not apply to ABM systems or their components used for development or testing, and located within current or additionally agreed test ranges." We believe it would be useful to assure that there is no misunderstanding as to current ABM test ranges. It is our understanding that ABM test ranges encompass the area within which ABM components are located for test purposes. The current U.S. ABM test ranges are at White Sands, New Mexico, and at Kwajalein Atoll, and the current Soviet ABM test range is near Sary Shagan in Kazakhstan. We consider that non-phased array radars of types used for range safety or instrumentation purposes may be located outside of ABM test ranges. We interpret the reference in Article IV to "additionally agreed test ranges" to mean that ABM components will not be located at any other test ranges without prior agreement between our Governments that there will be such additional ABM test ranges.

On May 5, 1972, the Soviet Delegation stated that there was a common under-

standing on what ABM test ranges were, that the use of the types of non-ABM radars for range safety or instrumentation was not limited under the Treaty, that the reference in Article IV to "additionally agreed" test ranges was sufficiently clear, and that national means permitted identifying current test ranges.

C. Mobile ABM systems

On January 29, 1972, the U.S. Delegation made the following statement:

Article V(1) of the Joint Draft Text of the ABM Treaty includes an undertaking not to develop, test, or deploy mobile land-based ABM systems and their components. On May 5, 1971, the U.S. side indicated that, in its view, a prohibition on deployment of mobile ABM systems and components would rule out the deployment of ABM launchers and radars which were not permanent fixed types. At that time, we asked for the Soviet view of this interpretation. Does the Soviet side agree with the U.S. side's interpretation put forward on May 5, 1971?

On April 13, 1972, The Soviet Delegation said there is a general common understanding on this matter.

D. Standing consultative commission

Ambassador Smith made the following statement on May 22, 1972:

The United States proposes that the sides agree that, with regard to initial implementation of the ABM Treaty's Article XIII on the Standing Consultative Commission (SCC) and of the consultation Articles to the Interim Agreement on offensive arms and the Accidents Agreement,[1] agreement establishing the SCC will be worked out early in the follow-on SALT negotiations; until that is completed, the following arrangements will prevail; when SALT is in session, any consultation desired by either side under these Articles can be carried out by the two SALT Delegations; when SALT is not in session, *ad hoc* arrangements for any desired consultations under these Articles may be made through diplomatic channels.

Minister Semenov replied that, on an *ad referendum* basis, he could agree that the U.S. statement corresponded to the Soviet understanding.

E. Standstill

On May 6, 1972, Minister Semenov made the following statement:

In an effort to accommodate the wishes of the U.S. side, the Soviet Delegation is prepared to proceed on the basis that the two sides will in fact observe the obligations of both the Interim Agreement and the ABM Treaty beginning from the date of signature of these two documents.

In reply, the U.S. Delegation made the following statement on May 20, 1972:

The U.S. agrees in principle with the Soviet statement made on May 6 concerning observance of obligations beginning from date of signature but we would like to make clear our understanding that this means that, pending ratification and acceptance, neither side would take any action prohibited by the agreements after they had entered into force. This understanding would continue to apply in the absence of notification by either signatory of its intention not to proceed with ratification or approval.

The Soviet Delegation indicated agreement with the U.S. statement.

[1] See Article 7 of Agreement to Reduce the Risk of Outbreak of Nuclear War Between the United States of America and the Union of Soviet Socialist Republics, signed Sept. 30, 1971.

3. UNILATERAL STATEMENTS

The following noteworthy unilateral statements were made during the negotiations by the United States Delegation:

A. Withdrawal from the ABM Treaty

On May 9, 1972, Ambassador Smith made the following statement:

The U.S. Delegation has stressed the importance U.S. Government attaches to achieving agreement on more complete limitations on Strategic offensive arms, following agreement on an ABM Treaty and on an Interim Agreement on certain measures with respect to the limitation of strategic offensive arms. The U.S. Delegation believes that an objective of the follow-on negotiations should be to constrain and reduce on a long-term basis threats to the survivability of our respective strategic retaliatory forces. The USSR Delegation has also indicated that the objectives of SALT would remain unfulfilled without the achievement of an agreement providing for more complete limitations on strategic offensive arms. Both sides recognize that the initial agreement would be steps toward the achievement of more complete limitations on strategic arms. If an agreement providing for more complete strategic offensive arms limitations were not achieved within five years, U.S. supreme interests could be jeopardized. Should that occur, it would constitute a basis for withdrawal for the ABM Treaty. The U.S. does not wish to see such a situation occur, nor do we believe that the USSR does. It is because we wish to prevent such a situation that we emphasize the importance the U.S. Government attaches to achievement of more complete limitations on strategic offensive arms. The U.S. Executive will inform the Congress, in connection with Congressional consideration of the ABM Treaty and the Interim Agreement, of this statement of the U.S. position.

B. Tested in ABM mode

On April 7, 1972, the U.S. Delegation made the following statement:

Article II of the Joint Text Draft uses the term "tested in an ABM mode," in defining ABM components, and Article VI includes certain obligations concerning such testing. We believe that the sides should have a common understanding of this phase. First, we would note that the testing provisions of the ABM Treaty are intended to apply to testing which occurs after the date of signature of the Treaty, and not to any testing which may have occurred in the past. Next, we would amplify the remarks we have made on this subject during the previous Helsinki phase by setting forth the objectives which govern the U.S. view on the subject, namely, while prohibiting testing of non-ABM components for ABM purposes: not to prevent testing of ABM components, and not to prevent testing of non-ABM components for non-ABM purposes. To clarify our interpretation of "tested in an ABM mode," we note that we would consider a launcher, missile or radar to be "tested in an ABM mode" if, for example, any of the following events occur: (1) a launcher is used to launch an ABM interceptor missile, (2) an interceptor missile is flight tested against a target vehicle which has a flight trajectory with characteristics of a strategic ballistic missile flight trajectory, or is flight tested in conjunction with the test of an ABM interceptor missile or an ABM radar at the same test range, or is flight tested to an altitude inconsistent with interception of targets against which air defenses are deployed, (3) a radar makes measurements on a cooperative target vehicle of the kind referred to in item (2) above during the reentry portion of its trajectory or makes measurements in conjunction with the test of an ABM interceptor missile or an ABM radar at the same test range. Radars used for purposes such as range safety or instrumentation would be exempt from application of these criteria.

C. No-transfer article of ABM Treaty

On April 18, 1972, the U.S. Delegation made the following statement:

In regard to this Article [IX], I have a brief and I believe self-explanatory statement to make. The U.S. side wishes to make clear that the provisions of this Article do not set a precedent for whatever provision may be considered for a Treaty on Limiting Strategic Offensive Arms. The question of transfer of strategic offensive arms is a far more complex issue, which may require a different solution.

D. No increase in defense of early warning radars

On July 28, 1970, the U.S. Delegation made the following statement:

Since Hen House radars [Soviet Ballistic missile early warning radars] can detect and track ballistic missile warheads at great distances, they have a significant ABM potential. Accordingly, the U.S. would regard any increase in the defenses of such radars by surface-to-air missiles as inconsistent with an agreement.

WHITE HOUSE REVISES INTERPRETATION OF ABM TREATY

(By Don Oberdorfer)

The Reagan administration, reversing the legal interpretation of previous administrations and some of its own past statements, has denied that testing and development except antiballistic missile systems such as these in the "Star Wars" program are permitted under the 1972 ABM treaty.

The administration's new interpretation of the treaty was confirmed yesterday by a senior White House official who briefed reporters on U.S. objections to the recent Soviet offer of a 50 percent cut in certain offensive missiles in return for a ban on Reagan's Strategic Defense Initiative, or Star Wars. The Soviet offer was described in the briefing as "a place to start" but in its present form one-sided and threatening to U.S. security.

White House national security affairs adviser Robert C. McFarlane volunteered a new interpretation of the 13-year-old Antiballistic Missile treaty in a television program Sunday. Yesterday the senior White House official, who cannot be identified under the ground rules of the news briefing, confirmed that McFarlane's televised remarks reflected what is now the fixed policy of the administration.

Retired ambassador Gerard Smith, chief U.S. negotiator of the ABM treaty, said the administration's interpretation "makes a dead letter" of the treaty. Smith said he believes it would make possible almost unlimited testing and development under Star Wars, and probably also actual "building" of the space-based antimissile system "as long as you did not deploy."

Administration sources said a new interpretation of the treaty had been under discussion and, at times, intense debate since last summer within the administration's Senior Arms Control Group, or SAC-G.

The administration was moving in the direction indicated by McFarlane in recent

weeks—though not to the point of claiming the treaty "authorized and approved" the testing, which were the words McFarlane used Sunday. In administration discussions, sources said, the issue was whether the treaty could be interpreted as permitting such activities. A final decision was "not completely clear" even after McFarlane made his remarks on "Meet the Press," an official said.

One official said the still-secret negotiating record of the ABM treaty is "ambiguous" on the point in question and subject to "a well justified disagreement" within the government. However, this view is disputed by Smith and John Rhinelander, legal counsel to the U.S. delegation that negotiated the ABM treaty.

The nub of the issue is whether an "agreed statement D" between the U.S. and Soviet delegations at the time of the treaty signing on May 26, 1972, gives a broad exemption from the restrictions of the treaty for future types of ABM systems "based on other physical principles" such as lasers and directed-energy weapons. Many elements of the administration's Star Wars research program are based on such exotic technology.

The purpose of agreed statement D, it said, was "to insure fulfillment of the obligation not to deploy ABM systems and their components except as provided in Article III of the treaty," which originally allowed both countries to maintain two conventional ABM systems, based on antimissile missiles.

The agreed statement said that if new ABM systems "based on other physical principles" are created in the future, "specific limitations on such systems and their components would be subject to discussion . . . and agreement in accordance with Article XIV of the treaty"—the article explaining how the treaty could be formally amended.

Until the administration's recent change of mind, that had been interpreted to mean that testing and development of exotic technologies were not legal, except possibly for new versions of fixed, land-based systems that the treaty allowed. Article V of the treaty formally precluded any testing or deployment of "ABM systems or components which are sea-based, air-based, space-based or mobile land-based."

Previously the administration's plans for tests of elements of Star Wars have been justified as complying with the ABM treaty on completely different grounds: that these projects were of such low quality, power or reliability that they did not qualify as "components" of an ABM system, or that they could be modified so as not to appear to be part of an illegal system.

Smith and Rhinelander said it was wrong to interpret the "agreed statement" as sanctioning testing of ABM systems or components that are flatly ruled out elsewhere in the treaty. "It is just impossible that an agreed statement supersedes a provision of the treaty," Smith said.

The administration's 1983, 1984 and 1985 Arms Control Impact Statements submitted to Congress by the Arms Control and Disarmament Agency took the position that the ABM treaty does put restrictions on ABM programs based on "directed energy technology" or other exotic technology "when such DE programs enter the field testing stage." The 1986 Arms Control Impact Statement, submitted this April, omitted that statement. The senior official who confirmed the administration's current position said the Soviet Union had never accepted an interpretation of the treaty that banned "research, testing, development of systems based on other physical principles."

The official said there had been "unilateral statements" made that the treaty ought to limit such exotic systems but he added that "never have the Soviets bought that."

The proposed cutbacks in the new Soviet arms control offer are "inappropriately linked" to the demand that the United States stop its Star Wars program, the senior official told reporters yesterday. "It's a precondition that must be dropped," he said.

That the Soviets have made an offer of deep cuts is "a very good development," and a sign that Reagan's policies have paid off, the official said. U.S. negotiators will pursue the details in Geneva, he added.

Most of the White House presentation, though, was centered on objections to the Soviet proposal, especially inclusion of U.S. Euromissiles and "forward based systems" among the strategic weapons to be cut by half. This would produce "highly unequal" forces with great advantages to Moscow, the official said.

Those two categories described as support for U.S. allies, were said to consume 1,149 of the U.S. entitlement of 1,680 strategic nuclear delivery systems under the Soviet plan. The United States would thus have only 531 missiles or bombers left for deterrence against Soviet nuclear attack, and these would be threatened by a much larger number of Soviet weapons.

The White House also said the Soviet proposal might unfairly hamper U.S. military modernization and could have serious verification problems. These aspects of the Soviet proposal have yet to be fully presented in Geneva, it said.

[From the New York Times, Oct. 14, 1985]

SHADOW ON THE SUMMIT

(By Anthony Lewis)

BOSTON.—It is only a matter of words—a Washington word game, you might say. But the players are after very large stakes. If their gambit works, it will sabotage next month's Reagan-Gorbachev summit meeting. And they have an even more ambitious goal: to remove all constraints on the nuclear arms race.

The game, little noticed outside of Washington, is being played with the words of the 1972 Anti-Ballistic Missile Treaty between the United States and the Soviet Union. For 13 years the treaty has been universally understood to mean what it says: that any ABM system based in space is outlawed. Now the claim is that it means the opposite. Out is in. Down is up.

This amazing proposition was first publicly advanced on television last week by President Reagan's national security adviser. Robert McFarlane. He said the 1972 treaty "approved and authorized" development and testing of space-based ABM systems "involving new physical concepts" such as lasers or directed energy.

In other words, President Reagan's Star Wars program can push ahead without any concern about the ABM treaty. But just last year the Reagan Administration said in a formal statement:

"The ABM treaty prohibition on development, testing and deployment of space-based ABM systems or components for such systems applies to directed-energy technology or any other technology used for this purpose. Thus, when such directed-energy programs enter the field-testing phase, they become constrained by these ABM treaty obligations."

How can that plain meaning have been transformed? By an "interpretation" that ought to embarrass the most brazen lawyer in town.

Article 3 of the 1972 treaty allowed a limited number of fixed, land-based ABM's. Article 5 banned the development, testing and deployment of "sea-based, air-based, space-based or mobile land-based" systems. Then, in "Agreed Statement D," the parties said they would discuss "specific limitations" on exotic new ABM systems if they were "created in the future."

The claim is that statement D permits new kinds of ABM systems unless the parties now agree to limit them. But the American diplomats who negotiated it say the purpose was the opposite. And statement D itself begins by saying that its purpose is "to insure fulfillment of the obligations not to deploy ABM systems and their components except as provided in Article 3."

An old national security hand, asked about the new "interpretation" of the treaty, said: "You've got to admire their brass. They have interpreted it 180 degrees from its intent. The idea is so preposterous that it would be amusing if it were not so serious."

The serious part is the consequences. The new reading would make the ABM treaty "a dead letter," as its chief negotiator, Gerard Smith, said last week. And it will have been killed in a way that casts doubt on the point of making any arms control agreements with the United States.

Treaties are meant to be serious undertakings. This one was negotiated for a purpose that all the world understood, to limit defensive systems. The United States Senate consented to the treaty by a vote of 88 to 2. Thirteen years later America would be telling the world: "The terms are inconvenient to us now, so on second thought they mean nothing."

The summit meeting would almost certainly be doomed to failure if President Reagan now adopts the new reading of the ABM treaty. This meeting is to focus on arms control, and what would be left to say if the United States had just in effect renounced the main existing arms agreement? Mr. Gorbachev would have a propaganda field day.

For all practical purposes, the whole idea of arms control would be dead. With the restraints on defensive systems gone, the Soviet Union would hardly proceed with its recent proposal to cut back on offensive weapons. The impulse would be to an all-out arms race, offensive and defensive.

With consequences so serious, for President Reagan personally and for international security, why would anyone in the Reagan Administration be pushing to read the ABM treaty out of existence? The answer is that the man who surely started this game of words wants the summit to fail and wants all arms control to end.

Richard Perle, Assistant Secretary of Defense, is the Administration's principal thinker on these issues—and is utterly opposed to arms control. The rereading of the ABM treaty has the stamp on it of his clever mind, and his ability to get ideas through the bureaucracy. But Secretary of State Shultz has not yet approved this idea, and there is still a chance that he will try to protect the President from this self-inflicted wound.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Mrs. COLLINS (at the request of Mr. WRIGHT), for today, on account of official business.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. BLAZ) to revise and extend their remarks and include extraneous material:)

Mr. PARRIS, for 60 minutes, October 30, 1985.

Mr. PARRIS, for 60 minutes, October 31, 1985.

Mr. PARRIS, for 60 minutes, November 1, 1985.

(The following Members (at the request of Mr. WILLIAMS) to revise and extend their remarks and include extraneous material:)

Mr. BARNES, for 5 minutes, today.

Mr. NELSON of Florida, for 5 minutes, today.

Mr. ANNUNZIO, for 5 minutes, today.

Mr. MONTGOMERY, for 5 minutes, today.

Mr. GONZALEZ, for 60 minutes, today.

Mr. GAYDOS, for 30 minutes, October 29, 1985.

Mr. GAYDOS, for 30 minutes, October 30, 1985.

EXTENSION OF REMARKS

By unanimous consent, permission to revise and extend remarks was granted to:

Mr. JACOBS, and to include extraneous matter, notwithstanding the fact that it exceeds two pages of the RECORD and is estimated by the Public Printer to cost $2,962.

Mr. BERMAN, and to include extraneous matter, notwithstanding the fact that it exceeds two pages of the RECORD and is estimated by the Public Printer to cost $4,506.

(The following Members (at the request of Mr. BLAZ) and to include extraneous matter:)

Mr. MILLER of Washington.

Ms. SNOWE in two instances.

Mr. KINDNESS.

Mr. MOORHEAD.

Mr. GILMAN.

Mr. VANDER JAGT.

(The following Members (at the request of Mr. WILLIAMS) and to include extraneous matter:)

Mr. MONTGOMERY.

Mr. MAVROULES.

Mr. ANDERSON in 10 instances.

Mr. GONZALEZ in 10 instances.

Mr. HAMILTON.

Mr. BROWN of California in 10 instances.

Mr. ANNUNZIO in six instances.

Mr. JONES of Tennessee in 10 instances.

Mr. BONER of Tennessee in five instances.

Mr. MORRISON of Connecticut.

Mr. SAVAGE.

Mr. LANTOS.

Mr. FASCELL in two instances.

Mr. MRAZEK.

Mr. LEHMAN of California.

Mr. HOWARD.

Mr. ROYBAL.

Ms. OAKAR.

Mr. MARKEY.

Mr. KASTENMEIER.

Mr. CONYERS.

Mr. BENNETT.

Mr. DYMALLY.

Mr. KANJORSKI in four instances.

SENATE JOINT RESOLUTIONS AND CONCURRENT RESOLUTION REFERRED

Joint resolutions and a concurrent resolution of the Senate of the following titles were taken from the Speaker's table and, under the rule, referred as follows:

S.J. Res. 207. Joint resolution to designate November 1, 1985, as "National Philanthropy Day"; to the Committee on Post Office and Civil Service.

S.J. Res. 228. Joint resolution relating to the proposed sales of arms to Jordan; to the Committee on Foreign Affairs.

S. Con. Res. 76. Concurrent resolution asking that the President bring the rights of the Polish people to the attention of the Soviet Government; to the Committee on Foreign Affairs.

ENROLLED BILL SIGNED

Mr. ANNUNZIO, from the Committee on House Administration, reported that that committee had examined and found truly enrolled a bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 2409. An act to amend the Public Health Service Act to revise and extend to the authorities under that act relating to the National Institutes of Health and National Research Institutes, and for other purposes.

ADJOURNMENT

Mr. GONZALEZ. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 2 o'clock and 22 minutes p.m.), the House adjourned until tomorrow, Tuesday, October 29, 1985, at 12 o'clock noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 2 of rule XXIV, executive communications were taken from the Speaker's table and referred as follows:

2186. A letter from the Acting Assistant Attorney General for Legislative and Intergovernmental Affairs, transmitting a draft of proposed legislation to amend title 28, and title 11 of the United States Code to provide for the appointment of United States trustees to supervise the administration of bankruptcy cases in judicial districts throughout the United States and for other purposes; to the Committee on the Judiciary.

2187. A letter from the Administrator, National Aeronautics and Space Administration, transmitting notice of proposed construction of NASA research and development facilities exceeding $500,000, pursuant to Public Law 98-361, section 101(e); to the Committee on Science and Technology.

2188. A letter from the Principal Deputy Assistant Secretary of Defense (Comptroller), transmitting notification of the transfers of authorizations and appropriations of DOD funds, pursuant to Public Law 97-252, section 1101, Public Law 97-377, section 732, Public Law 98-94, section 1201(c), Public Law 98-212, secton 729, Public Law 98-473, section 8025, and Public Law 98-525, section 1501; jointly, to the Committees on Armed Services and Appropriations.

2189. A letter from the Comptroller General, General Accounting Office, transmitting the examination of the Commodity Credit Corporation's Financial Statements for the year ended September 30, 1984, pursuant to 31 U.S.C. 9106(a). jointly, to the Committees on Government Operations, Foreign Affairs and Agriculture.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. ROSTENKOWSKI. Committee on Ways and Means. H.R. 2817. A bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, and for other purposes; with an amendment (Rept. 99-253, Pt. 2. Ordered to be printed.

Mr. WHITTEN. Committee on Appropriations. Report pursuant to section 302 of the Congressional Budget Act of 1974 (Rept. 99-333). Referred to the Committee of the Whole House on the State of the Union.

Mr. CONYERS. Committee on the Judiciary. H.R. 2713. A bill to amend title 18, United States Code, to modify certain provisions pertaining to restitution, and for other purposes; with an amendment (Rept. 99-334). Referred to the Committee of the Whole House on the State of the Union.

Mr. CONYERS. Committee on the Judiciary. H.R. 3511. A bill to amend title 18, United States Code, with respect to certain bribery and related offenses (Rept. 99-335). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 5 of rule X and clause 4 of rule XXII, public bills and resolutions were introduced and severally referred as follows:

By Mr. ROYBAL (for himself, Mr. BIAGGI, Mr. MICA, Mr. FRANK, Mr. TAUKE, Mr. JACOBS, Mr. BONER of Tennessee, Mr. SKELTON, Mr. HERTEL of Michigan, Mr. SMITH of Florida,

Mr. HOWARD, Mr. DICKS, Mr. WHITEHURST, Mr. MITCHELL, Mr. MARTINEZ, and Mr. OWENS):

H.R. 3630. A bill to amend part A of title XVIII of the Social Security Act to limit the rate of increase in the inpatient hospital deductible and to charge the extended care coinsurance amount and to amend the Internal Revenue Code of 1954 to increase by 8 cents per pack the excise taxes on cigarettes and to earmark revenues from the tax increase to the Federal Hospital Insurance Trust Fund; to the Committee on Ways and Means.

By Mr. BIAGGI:

H.R. 3631. A bill to amend part A of title XVIII of the Social Security Act to limit the increase in the inpatient hospital deductible and extended services coinsurance amount for 1986; to the Committee on Ways and Means.

By Mr. BROWN of Colorado:

H.R. 3632. A bill to amend the Internal Revenue Code of 1954 to simplify the issuing of tax-exempt bonds by institutions of higher education to finance scientific facilities and equipment; to the Committee on Ways and Means.

By Mr. DIOGUARDI:

H.R. 3633. A bill to require that funds which are deposited in an account at a depository institution by a check drawn on the Treasury of the United States shall be available for withrawal on the next business day after the business day on which such check is deposited, under certain circumstances; to the Committee on Banking, Finance and Urban Affairs.

By Ms. OAKAR:

H.R. 3634. A bill to require the Secretary of the Treasury to deposit in trust funds amounts equal to interest lost to such trust funds through disinvestment by the Secretary during the current fiscal year; to the Committee on Ways and Means.

By Mr. PEPPER:

H.R. 3635. A bill to amend part A of title XVIII of the Social Security Act to reduce the rate of increase of the inpatient hospital deductible and the rate of the extended care coinsurance amount; to the Committee on Ways and Means.

By Mr. SUNDQUIST (for himself, Mr. FRANKLIN and Mr. ROBERT F. SMITH):

H.R. 3636. A bill to establish a Department of Trade and for other purposes; to the Committee on Government Operations.

By Ms. SNOWE:

H. Con. Res. 221. Concurrent resolution to express the sense of the Congress that Medicare patients are entitled to accurate and timely information regarding their Medicare benefits; jointly, to the Committees on Ways and Means and Energy and Commerce.

ADDITIONAL SPONSORS

Under clause 4 of rule XXII, sponsors were added to public bills and resolutions as follows:

H.R. 580: Mr. GLICKMAN.

H.R. 871: Mr. COLEMAN of Texas.

H.R. 1047: Ms. SNOWE and Mr. TRAFICANT.

H.R. 1145: Mr. AKAKA, Mr. PEASE, and Mr. CONYERS.

H.R. 1430: Mr. FORD of Tennessee, Mr. ACKERMAN, and Mr. KASTENMEIER.

H.R. 1616: Mr. WRIGHT, Mr. ALEXANDER, Mr. FOLEY, Mr. WIRTH, Mr. OBEY, Mr. RITTER, Mr. WILSON, Mr. FROST, Mr. BONKER, Mr. DORGAN of North Dakota, Mr. KASTENMEIER, and Mr. YATES.

H.R. 1715: Mr. FUQUA.

H.R. 1769: Mr. EVANS of Illinois and Mr. MITCHELL.

H.R. 2440: Mr. TORRES and Mr. DENNY SMITH.

H.R. 2684: Mr. SABO, Mr. LIVINGSTON, Mr. DIOGUARDI, Mr. TORRICELLI, MR. GUARINI, Mr. SKEEN, Mr. GUNDERSON, Mr. SMITH of New Jersey, Mr. KINDNESS, and Mr. RIDGE.

H.R. 2761: Mr. MOODY and Mr. WILLIAMS.

H.R. 2823: Mr. ANDREWS, Mr. BARTON of Texas, Mr. BOEHLERT, Mrs. BOGGS, Mr. BOUCHER, Mr. BROWN of California, Mr. BRUCE, Mr. CLINGER, Mr. CROCKETT, Mr. DARDEN, Mr. DASCHLE, Mr. DWYER of New Jersey, Mr. EDGAR, Mr. FAZIO, Mr. FLORIO, Mr. GINGRICH, Mr. GLICKMAN, Mr. HENRY, Mr. LEHMAN of California, Mr. LEVINE of California, Mr. MCGRATH, Ms. KAPTUR, Mr. CONYERS, Mr. ATKINS, Mr. BARNES, Mr. RANGEL, Mr. FOGLIETTA, Mr. LUJAN, Mr. LUNDINE, Mr. MCDADE, Mr. MARTINEZ, Mr. RALPH M. HALL, Mr. MINETA, Mr. MITCHELL, Mr. MORRISON of Washington, Mr. MRAZEK, Mr. MURPHY, Mr. MURTHA, Mr. NELSON of Florida, Mr. PANETTA, Mr. PEPPER, Mr. REID, Mr. RITTER, Mr. ROE, Mr. SLAUGHTER, Mr. TORRICELLI, Mr. TRAFICANT, Mr. VOLKMER, Mr. YOUNG of Missouri, Mrs. BURTON of California, Mr. WEISS, Mr. BEVILL, Mr. TOWNS, and Mr. KOLTER.

H.R. 2854: Mr. ROE, Mr. MORRISON of Connecticut, Mr. GEJDENSON, Mr. TORRICELLI, Mr. MOLLOHAN, and Mrs. JOHNSON.

H.R. 3018: Mr. DASCHLE, Mr. EVANS of Illinois, Mrs. BOXER, Mr. MARTINEZ, Mr. STUDDS, Mr. BEDELL, Mr. GEJDENSON, Mr. DWYER of New Jersey, Mr. SCHEUER, Mr. SEIBERLING, Mr. FRANK, Mr. HAYES, Mrs. SCHNEIDER, Mr. WEAVER, Mr. ST GERMAIN, Mrs. COLLINS, Mr. EDWARDS of California, Mr. GLICKMAN, Mr. DURBIN, and Mr. EDGAR.

H.R. 3149: Mr. THOMAS of California, Mr. WHITLEY, and Mr. RANGEL.

H.R. 3180: Mrs. BENTLEY, Mr. DYSON, Mr. HENRY, Mr. LAGOMARSINO, Mr. WORTLEY, Mrs. MARTIN of Illinois, Mr. FROST, Mr. WILLIAMS, Mr. DARDEN, Mrs. BOXER, Mr. BERMAN, Mr. NIELSON of Utah, and Mrs. JOHNSON.

H.R. 3295: Mr. ATKINS, Mr. BARNES, Mr. BENNETT, Mrs. BOXER, Mrs. BURTON of California, Mrs. COLLINS, Mr. EVANS of Illinois, Mr. FAUNTROY, Mr. FAZIO, Mr. HOWARD, Mr. KLECZKA, Mr. LEHMAN of Florida, Mr. LEVIN of Michigan, Mr. MATSUI, Mr. MRAZEK, Mr. NEAL, Mr. OBERSTAR, Mr. RODINO, Mr. ROE, Mr. SABO, Mr. SAVAGE, Mr. SCHUMER, Mr. SMITH of Florida, Mr. TORRICELLI, Mr. TOWNS, Mr. UDALL, Mr. VENTO, Mr. WALGREN, Mr. WEAVER, and Mr. KASTENMEIER.

H.R. 3404: Mr. HYDE, Mrs. COLLINS, Mrs. MARTIN of Illinois, Mr. SMITH of New Hampshire, Mr. DIOGUARDI, Mr. MINETA, and Mr. MCCOLLUM.

H.R. 3436: Mr. EVANS of Illinois, Mr. DORNAN of California, Mr. DYSON, Mr. BURTON of Indiana, Mr. BRYANT, Mr. MCGRATH, Mr. SISISKY, Mr. RANGEL, Mr. BEVILL, Mrs. COLLINS, Mr. SCHAEFER, Mr. APPLEGATE, and Mr. MARTINEZ.

H.R. 3522: Mr. ROBERT F. SMITH, Mr. HAMMERSCHMIDT, Mr. MILLER of Washington, and Mr. COATS.

H.J. Res. 122: Mr. WATKINS, Mr. GREEN, Mr. SMITH of New Jersey, Mr. TAYLOR, Mr. COELHO, Mr. HALL of Ohio, Mr. ATKINS, Mr. SMITH of New Hampshire, Mr. WHEAT, Mr. WYLIE, Mr. FOLEY, Mr. FRANK, Mr. GEJDENSON, Mr. MONTGOMERY, Mr. WEBER, Mr. SKELTON, Mr. ROBERTS, Mr. SPRATT, Mr. MURTHA, Mr. SUNDQUIST, Mrs. LLOYD, Mr. PEPPER, Mr. GEPHARDT, Mr. KEMP, Mr. MARKEY, Mr. BUSTAMANTE, and Mr. SCHEUER.

H.J. Res. 126: Mr. JACOBS, Mr. ROBERT F. SMITH, Mr. WYDEN, Mr. HAMMERSCHMIDT, Mr. ANDERSON, Mr. ANNUNZIO, Mr. BONIOR of Michigan, Ms. MIKULSKI, Mr. BLILEY, and Mr. COATS.

H.J. Res. 127: Mr. MOODY, Mr. LEVIN of Michigan, Mr. GUARINI, Mr. KOSTMAYER, Mr. FLORIO, Mr. LUNGREN, Mr. EDGAR, Mr. FOGLIETTA, Mr. RINALDO, Mr. EMERSON, Mr. CARR, Mr. BUSTAMANTE, Mr. HAMMERSCHMIDT, Mr. HANSEN, Mr. HATCHER, Mr. HUNTER, Mr. HUTTO, Mr. IRELAND, and Mr. JONES of Tennessee.

H.J. Res. 314: Mr. RANGEL, Mr. SOLARZ, Mr. HOWARD, Mrs. LLOYD, Mr. SCHEUER, Mr. ROYBAL, Mr. TAUZIN, Mr. MILLER of California, Mr. CRAIG, and Mr. SIKORSKI.

H.J. Res. 375: Mr. BERMAN, Mr. BLILEY, Mrs. BOXER, Mr. BEREUTER, Mr. WEISS, Mr. CONYERS, Mr. DWYER of New Jersey, Mr. CHANDLER, Mr. SHUMWAY, Mr. LUNDINE, Mr. HUGHES, Mr. BARNES, Mr. JONES of Tennessee, Mr. FLIPPO, Mr. SISISKY, Mr. MCKINNEY, Mr. MARTINEZ, Mr. DEWINE, Mr. HORTON, Mr. DANNEMEYER, Mr. SWINDALL, Mr. WAXMAN, Mr. JACOBS, Mr. LELAND, Mr. SYNAR, Mr. HOYER, Mr. SEIBERLING, Mr. GILMAN, Mr. LUNGREN, Mr. LAFALCE, Mr. DYMALLY, and Mr. REGULA.

H.J. Res. 397: Mr. ENGLISH, Mr. FIELDS, Mr. FOLEY, Mr. FRANK, Mr. FRANKLIN, Mr. FRENZEL, Mr. GEJDENSON, Mr. GOODLING, Mr. GRADISON, Mr. GUNDERSON, Mr. HATCHER, Mr. HAWKINS, Mr. HENRY, Mrs. HOLT, Mr. HOPKINS, Mr. HUBBARD, Mr. HUGHES, Mr. HYDE, Mr. JEFFORDS, Mr. JONES of Tennessee, Mr. KEMP, Mr. LANTOS, Mr. LEHMAN of California, Mr. LENT, Mr. LEWIS of Florida, Mr. LIGHTFOOT, Mr. LIPINSKI, Mr. LUKEN, Mr. MCCOLLUM, Mr. MCEWEN, Mr. MCGRATH, Mr. MCMILLAN, Mr. MADIGAN, Mr. MARTIN of New York, Mr. MATSUI, Mr. MILLER of Washington, Mr. MOLINARI, Mr. MORRISON of Washington, Mr. NATCHER, Nr. NEAL, Mr. MINETA, Mr. MONSON, Mr. PACKARD, Mr. QUILLEN, Mr. ROBERTS, Mr. ROBINSON, Mr. RODINO, Mr. SAXTON, Mr. SCHUETTE, Mr. SHAW, Mr. SMITH of New Jersey, Mr. STANGELAND, Mr. STRANG, Mr. TAUKE, Mr. THOMAS of California, Mr. VANDER JAGT, Mr. WALKER, Mr. ZSCHAU, Mr. LOWERY of California, Mr. NICHOLS, Mr. ANNUNZIO, Mr. BATEMAN, Mr. BATES, Mr. BEDELL, Mr. BIAGGI, Mr. BLILEY, Mr. BOEHLERT, Mrs. BOGGS, Mr. BOSCO, Mr. BREAUX, Mr. BROOMFIELD, Mr. BROWN of Colorado, Mr. BROYHILL, Mr. BURTON of Indiana, Mr. CLINGER, Mr. COBLE, Mr. CRAIG, Mr. CRANE, Mr. DICKINSON, Mr. DYMALLY, Mr. DENNY SMITH, Mr. LUNGREN, Mr. REID, Mr. DEWINE, Mr. BARTLETT, Mrs. BENTLEY, Mr. BILIRAKIS, Mr. BROOKS, Mr. CONTE, Mr. COURTER, Mr. DANNEMEYER, Mr. DE LA GARZA, Mr. DIXON, Mr. DUNCAN, Mr. EVANS of Iowa, Mr. FASCELL, Mr. FAZIO, Ms. FIEDLER, Mr. GALLO, Mr. GILMAN, Mr. GROTBERG, Mr. HAMMERSCHMIDT, Mr. KINDNESS, Mr. LATTA, Mr. LEWIS of California, Mr. LOEFFLER, Mr. LOTT, Mr. LUJAN, Mr. MCCANDLESS, Mr. MCDADE, Mr. MACK, Mrs. MARTIN of Illinois, Mr. MARTINEZ, Mr. MICHEL, Ms. OAKAR, Mr. PANETTA, Mr. PARRIS, Mr. PETRI, Mr. RANGEL, Mr. REGULA, Mr. ROSE, Mr. ROSTENKOWSKI, Mr. ROTH, Mr. RUSSO, Mr. SMITH of New Hampshire, Ms. SNOWE, Mr. SOLOMON, Mr. STARK, Mr. STENHOLM, Mr. STUMP, Mr. SWIFT, Mr. TORRES, Mr. VOLKMER, Mrs. VUCANOVICH, Mr. WEBER, Mr. WHITLEY, Mr. WHITTAKER, Mr. WHITTEN, Mr. WOLF, Mr. WYDEN, Mr. YOUNG of Florida, and Mr. YOUNG of Alaska.

H. Con. Res. 207: Mr. TOWNS, Mr. VOLKMER, Mr. HEFTEL of Hawaii, Mr. KOSTMAYER, Mr. YATRON, Mr. HUGHES, and Mr. TRAFICANT.

H. Res. 256: Mr. PANETTA.

PETITIONS, ETC.

Under clause 1 of rule XXII, petitions and papers were laid on the Clerk's desk and referred as follows:

240. By the SPEAKER: Petition of the city council of Anoka, MN, relative to the Baha'i community in Iran; to the Committee on Foreign Affairs.

241. Also, petition of Francisco San Marte, Philippines, relative to citizenship; to the Committee on the Judiciary.

242. Also, petition of the city council of Eureka, CA, relative to tax reform; to the Committee on Ways and Means.